

Charles Areskine's Library

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# Charles Areskine's Library

*Lawyers and Their Books at the Dawn of the  
Scottish Enlightenment*

*By*

Karen Baston



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Any remaining mistakes are my own.

*Karen Baston*

Trinity, Edinburgh

5 December 2015

## Abbreviations

AL	Advocates Library
Alva Coll.	Alva Collection
BL	British Library
CUP	Cambridge University Press
ESTC	English Short Title Catalogue
EUL	University of Edinburgh Library
EUP	Edinburgh University Press
HMSO	Her (or His) Majesty's Stationery Office
NA	National Archives, Kew
NAS	National Archives of Scotland, Edinburgh
NLS	National Library of Scotland
ODNB	<i>Oxford Dictionary of National Biography</i>
OUP	Oxford University Press
RCAHMS	Royal Commission on the Ancient and Historical Monuments of Scotland



## INTRODUCTION

# Scottish Lawyers in the Scottish Enlightenment

There still remains great uncertainty, doubt, and lack of clarity about what exactly the Enlightenment was and what intellectually and socially is actually involved.<sup>1</sup>

—JONATHAN I. ISRAEL

The Scottish Enlightenment had its own concerns and idiosyncratic values and went its own way.<sup>2</sup>

—ROGER L. EMERSON

## The Scottish Enlightenment: What, Where, When?

Scottish or otherwise, the Enlightenment as a subject has always generated a wide range of opinions and theories. Roger L. Emerson's statement above offers the promise of something unique in the Scottish experience of the advance of reason in the eighteenth century while Jonathan I. Israel's recommends caution to any scholar seeking to define the phenomenon. The Enlightenment and its meaning and significance have long been subjects of interest to historians. Multiple debates continue as to the nature of the Enlightenment or "Enlightenments", the places it or they occurred, the derivation and dissemination of "enlightened" thinking, and the lasting impacts and legacies of those who participated in it. Many approaches have been taken in the quest for understanding the Enlightenment. This introduction highlights some of the discussions about the meaning of the Enlightenment in a Scottish context. It then explains why and how Scottish lawyers and their libraries played leading roles in the intellectual phenomenon with a particular focus on Enlightened Edinburgh as a "hotbed of genius" in the eighteenth century. Theories about the importance of the Enlightenment cover more than a century of history and even this timeframe is prone to expansion, it seems, with each new interpretation.

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<sup>1</sup> Jonathan I. Israel, *Enlightenment Contested: Philosophy, Modernity, and the Emancipation of Man, 1670–1752* (Oxford: OUP, 2008), p. v.

<sup>2</sup> Roger L. Emerson, *Essays on David Hume, Medical Men and the Scottish Enlightenment: "Industry, Knowledge and Humanity"* (Farnham: Ashgate Publishing, 2009), 7.

### ***Defining the Scottish Enlightenment***

The term “Scottish Enlightenment” dates from 1900.<sup>3</sup> William Robert Scott’s study of Francis Hutcheson, published in that year, focused on the philosopher’s university career (1730–1746) as the high time of the Enlightenment in Scotland. Scott identified the Scottish experience of the Enlightenment as unique but was careful to stress that Hutcheson’s teaching was inspired by a wide range of sources and that his thinking was cosmopolitan, not provincial, despite his coinage of the new term for the Scottish experience. The new “Scottish Enlightenment” attracted little scholarly interest until the 1960s.<sup>4</sup>

In 1967, Hugh Trevor-Roper set off a new era in Scottish Enlightenment historiography when he defined it as “that efflorescence of intellectual vitality that became obvious after the defeat of the last Jacobite rebellion in 1745”.<sup>5</sup> He thereby established that the Enlightenment was a specific event in the history of intellectual endeavour and placed it in the eighteenth century. However, scholars soon began to trace the origins of the Scottish Enlightenment to earlier dates while investigating its social and cultural aspects. Jane Rendall, for example, placed the genesis of the Scottish Enlightenment firmly in the seventeenth century while acknowledging its development in the early eighteenth century. The survival of three key institutions in post-Union Scotland: the Church of Scotland, the educational system, and the legal system is at the heart of Rendall’s argument. These institutions allowed Scots to keep a sense of separate identity after 1707. Meanwhile, the “enlightened thinking” of Isaac Newton and John Locke influenced Scottish intellectuals such as Francis Hutcheson, David Gregory, and Colin Maclaurin.<sup>6</sup>

Rendall’s thesis fits well with more recent analyses of the Scottish Enlightenment which give it a British context. Ian D. Whyte, for example, credits such factors in the “hard to pinpoint” Scottish Enlightenment as the post-Union relationship with England, educational and economic improvements, increased prosperity, and the decline of Calvinism. He places the “intellectual awakening” of the Scottish Enlightenment in the second quarter of the eighteenth century since Newtonian ideas had had time to take effect and the emulation of English

<sup>3</sup> Richard B. Sher, *Church and University in the Scottish Enlightenment: The Moderate Literati of Edinburgh* (Edinburgh: EUP, 1985), 4.

<sup>4</sup> Paul Wood, “Postscript: On Writing the History of Scottish Philosophy in the Age of Enlightenment”, in *Scottish Philosophy in the Eighteenth Century*, 1: *Morals, Politics, Art, Religion*, ed. Aaron Garrett and James A. Harris (Oxford: OUP, 2015), 453–64 at 458–59.

<sup>5</sup> Hugh Trevor-Roper, quoted in Sher, *Church and University*, 4.

<sup>6</sup> Jane Rendall, *The Origins of the Scottish Enlightenment, 1707–1776* (London: Macmillan, 1978), 13, 19–20.

advances in literacy, publication, and prosperity provided models for improvement.<sup>7</sup> Nicholas Phillipson also identifies Scotland's relationship with England having a major role in the development of the Scottish Enlightenment. In this argument, the Union of 1707 caused Scots to be either attracted to or repelled from all things English. Some Scots sought to reinforce Scottish identity while others embraced English culture. Phillipson's Scottish Enlightenment is very much a cultural one with *literati* playing key roles as commentators, educators, and setters of fashion.<sup>8</sup> Some of these *literati* had links to the legal profession or were lawyers themselves. Other approaches to the Enlightenment have included Richard B. Sher's study of the book publishing industry which puts the arguments for and against the Scottish Enlightenment in the contexts of authorship and material culture.<sup>9</sup>

### *Refining the Definition of the Scottish Enlightenment*

Roger L. Emerson criticises interpretations such as these for their lack of understanding regarding the scientific nature of the Scottish Enlightenment. Emerson argues that enlightened thinking goes back to the seventeenth century with Boyle, Newton, and Locke as major influences. By the early eighteenth century empirical philosophy had been integrated into the arts curriculum in Scotland and Newtonian methods were applied to all areas of study. Scientific principles were applied to legal scholarship with the result that law was explored in social and historical contexts and the study of natural law theory came to have special interest for moral philosophers. Emerson sees the fusion of Newtonianism and natural law as key to the development of the Scottish Enlightenment.<sup>10</sup> This fusion of law and the natural sciences is well-illustrated in the person of James Dalrymple, Viscount Stair (1619–1695). Stair used a systematic approach to legal science in his influential *The Institutions of the Law of Scotland*, first published in 1681. In this work, Stair set out "to teach

7 Ian D. Whyte, *Scotland before the Industrial Revolution: An Economic and Social History, c. 1050–c.1750* (London and New York: Longman, 1995), 313–19.

8 N.T. Phillipson, "Culture and Society in the 18th Century Province: The Case of Edinburgh and the Scottish Enlightenment", in Laurence Stone (ed.), *The University in Society, 2: Europe, Scotland and the United States from the 16th to the 20th century* (Princeton: Princeton UP, 1974), 429.

9 Richard B. Sher, *The Enlightenment and the Book: Scottish Authors and Their Publishers in Eighteenth-Century Britain, Ireland, and America* (Chicago and London: University of Chicago Press, 2006). See especially his literature review at 11–24.

10 Roger L. Emerson, "Science and Moral Philosophy in the Scottish Enlightenment", in M.A. Stewart (ed.), *Studies in the Philosophy of the Scottish Enlightenment* (Oxford: Clarendon Press, 1990), 11–36.

law as rationally grounded, systematic and when worked out, would give the Scots a system which would improve their lives by making secure their properties and personal rights".<sup>11</sup> Stair also had a keen interest in the new sciences that were emerging in the seventeenth century as his publication of 1686, *Physiologia nova experimentalis*, shows.<sup>12</sup>

Emerson's recent works explore the importance of patronage and improvement in relation to the new thinking and its spread throughout elite Scottish society. For Emerson, Archibald Campbell, the earl of Ilay's crucial role in inspiring enlightenment thinking and activity had a dramatic impact on the development of Scotland's progressive society. Emerson convincingly argues that the elements which made the Scottish Enlightenment were in place by 1700 but also stresses the idea that they must also be considered within a European context.<sup>13</sup> Despite the Union with England, Edinburgh's "institutional complement...resembled that of the capitals of minor states and provincial capitals of France".<sup>14</sup> The Scottish Enlightenment, for Emerson, was "not principally about politeness or civic humanism but something more basic, the remaking of society so that it could produce men able to compete in every way in a rapidly changing world".<sup>15</sup> More broadly, it was a "great improving, secularizing movement driven mainly by notions of utility and rationality".<sup>16</sup>

Jonathan I. Israel's *Enlightenment Contested: Philosophy, Modernity, and the Emancipation of Man, 1670–1752* critiques much of the scholarship surrounding the Enlightenment and offers an alternative vision. Israel argues that two concurrent enlightenments originated in the seventeenth century. A "radical" strand was inspired by the sceptical thinking of Spinoza and his followers on the Continent while a "mainstream" enlightenment developed along the lines of Newton and Locke in Britain. He sees an emphasis on authors who wrote or who were translated into English, such as Voltaire and David Hume, as needing correction "to set the historical and philosophical record straight and avert the tendency of one particular modern intellectual tradition which claims to be

<sup>11</sup> Emerson, *Essays on David Hume*, 15.

<sup>12</sup> Ibid. 8.

<sup>13</sup> Roger L. Emerson, *Academic Patronage in the Scottish Enlightenment: Glasgow, Edinburgh and St Andrews Universities* (Edinburgh: EUP, 2008); Roger L. Emerson, *An Enlightened Duke: The Life of Archibald Campbell (1682–1761), Earl of Ilay, 3rd Duke of Argyll* (Kilkerran: Humming Earth, 2013).

<sup>14</sup> Roger Emerson, "The World in Which the Scottish Enlightenment Took Shape", in *Scottish Philosophy in the Eighteenth Century*, 1: *Morals, Politics, Art, Religion*, ed. Aaron Garrett and James A. Harris (Oxford: OUP, 2015), 16–31 at 31.

<sup>15</sup> Ibid.

<sup>16</sup> Emerson, *Essays on David Hume*, 226.

the right one to pre-empt and appropriate the Enlightenment for itself".<sup>17</sup> Israel believes the contributions of the "mainstream" enlightenment have been retrospectively overrated. He does not see the Scottish Enlightenment as particularly special and sees its influence, as well as that of Newtonian philosophers, as overstated by historians who prefer to read texts in English at the expense of French Enlightenment thinkers. However, for the purpose of this book, a more relevant note is that Israel's chronology now fits with that of other scholars and he places the "Enlightenment era" at "from around 1680 to around 1800".<sup>18</sup> This agrees with Emerson's description which stresses the "Scottish Enlightenment as integral to a European Enlightenment running from sometime in the late seventeenth century to sometime after 1800".<sup>19</sup>

### *The International Context*

Understanding the connection that the Scottish had with the Continent and beyond is essential when studying their intellectual world in the early years of the enlightened era. Scottish travellers frequently visited or lived in Europe and even farther afield in the Americas and West Indies as medical men serving with Scottish soldiers, merchants seeking trade, political exiles looking for refuge, and grand tourists in quest of culture. Students of divinity, medicine, and law went abroad to obtain educations that would allow them to take up professions upon their return to Scotland. These active international interactions "made Edinburgh a significant clearing house for information about natural history, science and medicine".<sup>20</sup>

The fact that Scottish advocates completed their legal training by studying abroad, especially in Holland, is well-known. The influence of this education was profound and there is a special relationship between the legal university-based training Scottish advocates obtained in the Netherlands in the late seventeenth and early eighteenth centuries and Scots law.<sup>21</sup> Along with students

<sup>17</sup> Israel, *Enlightenment Contested*, 60.

<sup>18</sup> Jonathan I. Israel, *Democratic Enlightenment: Philosophy, Revolution, and Human Rights, 1750–1790* (Oxford: OUP, 2011), 6.

<sup>19</sup> Emerson, *Essays on David Hume*, 226.

<sup>20</sup> Ibid. 3–5, 15.

<sup>21</sup> See John W. Cairns, "Importing Our Lawyers from Holland": Netherlands Influences on Scots Law and Lawyers in the Eighteenth Century", in Grant G. Simpson (ed.), *Scotland and the Low Countries*, Mackie Monograph 3 (East Linton: Tuckwell Press, 1996), 136–53; Robert Feenstra, "Scottish-Dutch Legal Relations in the Seventeenth and Eighteenth Centuries", in H. De Ridder-Symoens and J.M. Fletcher (eds), *Academic Relations between the Low Countries and the British Isles, 1450–1700: Proceedings of the First Conference of Belgian, British and Dutch Historians of Universities held in Ghent, September 30–October 2, 1987* (Gent, 1987), 25–45.

of divinity and medicine who travelled to the Netherlands and beyond to obtain professional educations, legal scholars were “exposed to views which regarded knowledge as progressive, reforming and improving all aspects of the culture in which they lived”.<sup>22</sup> Some of Charles Areskine’s contemporaries, including Sir John Clerk of Penicuik, wrote journals and letters that give details about their experiences abroad and these, taken in combination with Areskine’s more limited surviving material from this time in his life, can be used to explore the contents of the Dutch curriculum undertaken by Scottish scholars. For Emerson, Clerk is the embodiment of the early Scottish Enlightenment. He was a legal scholar, musician, architect, improver, and virtuoso. As Baron of the Scottish Court of Exchequer and member of scientific societies, Clerk was active in efforts to improve Scotland. These “activities, for him, were all of a piece”.<sup>23</sup>

### *The Scottish Enlightenment: A Working Definition*

Perhaps the best way to frame the Scottish Enlightenment as it is understood in the chapters that follow is offered by John Robertson. Robertson takes an approach that allows for fluid interactions between the social and the intellectual.<sup>24</sup> In his comparative study of Scotland and the Kingdom of Naples, Robertson characterises an enlightened environment as one having “major thinkers interested in the study of human nature, political economy, and the progress of society, and committed to the betterment of life on earth regardless of the next”.<sup>25</sup> He does not, however, include natural sciences in his Enlightenment structure.<sup>26</sup> Following Philipson, Robertson particularly notes the importance of lawyers in a political context since “both nobles and lairds relied on the expertise of the legal profession, writers, and advocates, a high proportion of whom were themselves of landed origin and the senior members of the profession”.<sup>27</sup> Although scholars disagree about the “intellectual core of the Scottish Enlightenment”, it is clear that “enlightened” people did not limit their interests to a single type of intellectual endeavour.<sup>28</sup> My working definition of the Scottish Enlightenment includes all of the aspects that scholars debate since my analysis of Charles Areskine’s books had to allow for open interpretations

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<sup>22</sup> Emerson, *Essays on David Hume*, 15.

<sup>23</sup> Emerson, “World”, 29.

<sup>24</sup> Wood, “Postscript”, 463.

<sup>25</sup> John Robertson, *The Case for the Enlightenment: Scotland and Naples, 1680–1760* (Cambridge: CUP, 2005), 44.

<sup>26</sup> Wood, “Postscript”, 457.

<sup>27</sup> Robertson, *Case*, 67.

<sup>28</sup> Wood, “Postscript”, 460.

about the titles listed in his library catalogue. The variety of interests found in Areskine's library bore this approach out. These offer an argument that any description may have to include more combinations of variables than have been previously posited if we are ever to have a full picture of the Scottish Enlightenment's importance.

The early Scottish Enlightenment primarily happened in an Edinburgh where lawyers and other "men of genius" lived and worked together within the confines of an old town ripe for expansion and redevelopment. R.A. Houston's discussions of the improvement in the quality of life in early eighteenth-century Edinburgh, the decline of religious belief, and the development of the town as a cultural centre all point to Scotland's capital having a special energy at the time. His argument that elements of the Scottish Enlightenment can be traced to the 1660s also fits well with many of the other opinions described above.<sup>29</sup> The historical evidence of the writings of Hume and his contemporaries, of the reforms undertaken by the University, of the existence of clubs and societies, of coffeehouses, of newspapers and popular periodicals, of libraries, and of correspondence all give Edinburgh's citizens the right to claim a leading role in the Scottish Enlightenment story. The world Areskine inhabited had, moreover, an international scope that reached beyond the wynds of Edinburgh's Old Town. Enlightened people during Areskine's lifetime were concerned with legal theory, history, literature, culture, politics, improvement, scepticism, and natural history. The Scottish Enlightenment involved all of these factors and some evidence for this can be found in the libraries of Areskine and his legal contemporaries.

In what follows an "enlightened" person of the Scottish Enlightenment is taken to mean someone who has a moderate attitude to religious matters, an interest in the sciences and the improvement of the human experience, and is an active participant in the professional and social opportunities offered in both town and country settings. Enlightened Scottish lawyers – and other enlightened people of their age – would not have made distinctions between the arts and sciences in quite the same way we do now. Library furnishings included equipment for scientific experiments and mathematical calculations: these were part of an educated person's intellectual interests. Lawyers were interested in the "science of man" and medical men used the visual arts to express their scientific findings. Divines explored the realities of the human character alongside philosophers and historians. Patrons commissioned works

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<sup>29</sup> R.A. Houston, *Social Change in the Age of Enlightenment: Edinburgh, 1660–1760* (Oxford: Clarendon Press, 1994), esp. 7–8, 11. See also Clare Jackson, *Restoration Scotland, 1660–1690: Royalist Politics, Religion and Ideas* (Woodbridge: Boydell Press, 2003).

of architecture and art and readers at all levels of society participated in print culture from buying newspapers and pamphlets to subscribing to books. These were all aspects of being a participant in an enlightened age.

### **Books, Libraries, and Their Histories**

Scholars of intellectual history have turned their attention to the histories of books and their publication. Some of the main themes in this area are the idea of print culture, the spread of ideas, the techniques of reading, the development of the Republic of Letters, the relationship of print to the scientific revolution, and the development of personal, institutional, and public libraries. Although there will not be space for full discussions of them, several of these developments will be touched upon in this book.

A key text for some of these areas is Adrian Johns's influential *The Nature of the Book* which, although primarily concerned with seventeenth century scientific book and periodical publishing in England, examines the mechanics and implications of book publishing in a European context.<sup>30</sup> Johns's interest in the influence of the Royal Society is directly relevant to this book's discussion of the rise of natural philosophy in the arts curriculum of the Scottish universities. Richard B. Sher does not agree with Johns's scientific and London-based model.<sup>31</sup> He calls instead for a "multidisciplinary... Enlightenment book history...because it is necessary to consider different genres of books in order to know whether a particular form of publishing was typical or unusual, a paradigm or an aberration".<sup>32</sup> This argument is developed here with special reference to the legal publications that Scottish advocates bought and used in practice or for the study of law more generally.

An understanding of how eighteenth-century libraries developed has been enhanced by recent studies in the history of the book. These studies help to place Areskine's collection in context since they can be used to examine the specifics of Areskine's library including how he acquired his books, how he used them, and how they enabled him to participate in Enlightenment culture. A good private library was an essential tool for an educated gentleman. When they created their own catalogues and copied those of others, book collectors were fulfilling a social obligation. As the French librarian and philosopher

<sup>30</sup> Adrian Johns, *The Nature of the Book: Print and Knowledge in the Making* (Chicago and London: University of Chicago Press, 1998), see esp. Ch 7.

<sup>31</sup> Sher, *Enlightenment and the Book*, 8–9.

<sup>32</sup> Ibid. 10.

Gabriel Naudé noted in 1627, uncatalogued collections were doomed to “remain buried in perpetual silence”.<sup>33</sup> Library catalogues helped social relationships since “to do pleasure and service to a friend, when one cannot furnish him with the book he lacks, to show...to him the place where he truly can find a copy of it” was a mark of membership in polite society.<sup>34</sup> Developing a good private collection was better still. Jonquil Bevan has noted that many Scottish graduates educated at the University of Edinburgh in the seventeenth century went on to assemble notable private libraries.<sup>35</sup> Scottish advocates in particular had reputations as book collectors. Their collecting activity was in part inspired by the way they obtained their legal education. Studying abroad, especially in France and Holland, was necessary for a career as an advocate. As law students travelled throughout Europe they acquired books. Some texts, of course, were relevant to their studies of law but others addressed cultural and scientific concerns.

### Scottish Lawyers and the Scottish Enlightenment

The role of lawyers in the intellectual and cultural history of the early years of the Scottish Enlightenment needs to be clarified since lawyers had a special place in it. By the 1720s Scottish lawyers had adapted Newtonian philosophy to the legal theories of the natural law of Hugo Grotius and Samuel van Pufendorf which they studied using Newtonian experimental methods. These studies resulted in clarifications about the rights and duties of members of society.<sup>36</sup> As professional men with active careers to pursue, most advocates have not left obvious written evidence for their participation in published Enlightenment debates. However, they participated in other influential ways including offering patronage, sponsoring and buying books, and improving estates and institutions. With their support of education and the financial and political backing they gave to scholars, philosophers, and poets, Scottish lawyers provided the framework which allowed the Scottish Enlightenment to take shape and to flourish. Their legacy is complex. Their study of modern ideas of natural law

33 Gabriel Naudé, *Advis pour dresser une bibliothèque* (1627); quoted in Roger Chartier, *The Order of Books: Readers, Authors, and Libraries in Europe between the Fourteenth and Eighteenth Centuries*, trans. Lydia G. Cochrane (Cambridge: Polity Press, 1994), 22.

34 Ibid. 24.

35 Jonquil Bevan, “Seventeenth-Century Students and their Books”, in Gordon Donaldson (ed.), *Four Centuries: Edinburgh University Life, 1583–1983* (Edinburgh: EUP, 1983), 19, 23.

36 Rendall, *Origins*, 24.

and its ethical importance and moral implications shaped the sceptical rational thinking which was a hallmark of the Scottish Enlightenment. Meanwhile, their continued exploration of Roman law influenced modern Scots law and this still has resonance today. Scottish lawyers were masters of combining ancient and modern ideas to create coherent and workable systems of thinking. With such thinking in place it fits that Edinburgh's New Town was a modern suburb built in a classical style.

This book explains why lawyers and their libraries were important in the development of the Scottish Enlightenment. Scottish advocates were part of an international intellectual world and they helped to disseminate ideas and reforms. Lawyers of Areskine's generation began their book collecting when they were students. Many of those who travelled spent time in the Netherlands, then the centre of the book-producing world, for their law studies. They studied Roman law, natural law, and the legal systems of other places all the while absorbing continental cultural opportunities. Many also studied in, or visited Italy, Germany, France, and other continental destinations. Language and travel guides, the latest operas, and collections of poetry and historical writings all came back alongside legal textbooks with lawyers when they returned to Scotland to take their places as leaders of society. Advocates had their professional collection, the Advocates Library in Edinburgh, as a model for their own book collecting. The Advocates Library, although created as a resource for legal practitioners, included works beyond the scope of identifying, practicing, and serving the law. At the very least, an advocate needed knowledge of the works of classical antiquity and an understanding of the texts of the *Corpus iuris civilis*. The library drew in scholars as well as advocates from its start.<sup>37</sup> Advocates' status as legal *virtuosi* gave them the confidence to inspire the advancement of secular thinking, to promote the evolution of the Scottish legal system, and to encourage the development of the "Athens of the North".

Scottish advocates worked in a profession that relied on books. Some of the most important evidence of this dependency and its operation survives in the form of their written pleadings for the Court of Session. These pleadings, known as Session Papers, not only identified the relevant points of law in specific cases but also displayed their authors' knowledge of both classical works and of modern ideas. Written on behalf of clients, Session Papers were circulated among legal colleagues and their arguments were presented in a public place, so had both professional and public audiences in mind. Advocates composed these Session Papers by citing books from their private libraries and those they consulted in the Advocates Library. The books they used to support

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37 Robertson, *Case*, 113.

legal arguments in some cases had intellectual and social relevance. Advocates' perception of their shared world is illustrated by a statement in one of Charles Areskine's Session Papers. Having cited a variety of sources including civil law and the customary laws of Burgundy, England, the Hanse Towns, and Scotland, Areskine then says that "It could be an endless labour, to run thorow the whole Authorities upon this Point which are almost innumerable, and is to be seen in the most common Books in the Hands of Lawiers".<sup>38</sup>

Lawyers built libraries and shared books and thereby promoted social relationships, enhanced social alliances, and ensured their status as an elite group in eighteenth-century Scottish and European society. Visiting libraries and socialising in them both at home and abroad demonstrated their learning and cultural concerns. A private library such as the one Areskine collected provided more than the tools for professional practice or the sources of polite learning: it was, both in its books and in its physical space, at the very centre of an enlightened gentleman's life.

### **The Library of Charles Areskine: Scottish Lawyers and Book Collecting**

As lawyers filled the social void made when the nobility left Scotland for London after the Union of 1707, well-educated and well-connected advocates became the elite members of Edinburgh society. The career of Charles Areskine of Alva, lawyer, politician, judge, and book collector, demonstrates both the interconnectedness of Scotland with the rest of Europe and the influences that inspired the Scottish Enlightenment. Lawyers, who relied on printed texts in their professional lives, also collected private libraries that reveal their areas of interest beyond their professional concerns. Areskine's library catalogue of 1731 survives and its contents show that Edinburgh's legal community shared a sense of belonging to an international Republic of Letters.

Born into a landed family in 1680, Charles Areskine began his life at the very start of the Scottish Enlightenment. Areskine had an education befitting his background before attending the University of St Andrews. He became a regent

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38 Charles Areskine, *Information for Appollonius Lampsints, Hieronymus Joseph Boudaen, Johan Steengracht, and Peter van Hoorn, Lords Directors of the Honourable East India Company of Holland, of the Chamber of Zeland and Mr. William Drummond of Grange, their factor, for his interest, against His Grace Charles Duke of Queensberry and Dover, Vice Admiral of Scotland, for his interest, and Mr. Alexander M'Kenzie, one of the Principal Clerks of the Court of Session, his deputy* (Edinburgh, 1729), 23.

at the University of Edinburgh in 1701 and, when the University restructured its academic provision, the first professor of the law of nature and nations there in 1707. Areskine travelled to the Netherlands from 1708 to 1711 to study law and on his return to Edinburgh passed advocate. His legal career flourished and he steadily moved up to take the highest positions in the Scottish legal system. By 1731, when his library catalogue was created, he was Solicitor General. He was called to the Bench in 1744 and took Lord Tinwald as his judicial name. As a lawyer in Edinburgh, Areskine joined an elite group but he was also linked by descent, marriage, and patronage to Scotland's leading families. Areskine was known for his scholarship throughout his career and his reputation for erudition survived long after his death in 1763. He and his books are ideal for a study of the origins of the Scottish Enlightenment.

## Outline

Although primarily a study of Charles Areskine and his library, this book also touches on related topics such as the place of religion in Edinburgh society, gender issues in the persons of Areskine's wife and daughters, and the material culture of the book. This book opens with biographical information about Charles Areskine of Alva and explains the unique opportunity his library offers for a case study of legal and other book ownership in the first half of the eighteenth century. The first chapter considers Areskine's book catalogue, which survives as a manuscript which is now in the National Library of Scotland, and the books he once owned, some of which are currently in the Alva Collections housed in the National Library of Scotland and in the Advocates Library. This chapter reflects on the role of advocates in Scottish society and discusses early modern advocates' libraries in Scotland more generally while placing Areskine and his books in context.

Chapter 2 looks at the rise of secularism in late seventeenth and early eighteenth-century Scotland by considering the experiences of two young Scottish arts scholars who met very different fates as the century turned. Charles Areskine became a university teacher. Thomas Aikenhead, a reader and sharer of "atheistical" books, was executed for blasphemy. When Areskine launched his teaching career as a regent in early eighteenth-century Edinburgh, the issues surrounding Aikenhead's trial and execution were still very much alive. Aikenhead read, or supposedly had read, Descartes, Hobbes, and Locke, authors suspected of promoting atheism: their names were cited at Aikenhead's trial as the inspiration for his blasphemous ideas. The books that young Scottish university scholars read mattered and this chapter considers the secular and scientific ideas

they took from them. Areskine taught a shifting and changing curriculum and went on to become the first professor of the law of nature and nations at Edinburgh in 1707. His acceptance and promotion of Newtonianism, with its insistence on the existence of a supreme being, ensured that his intellectual positions were considered sound and he was thus able to engage with ideas and share them without fear of prosecution.

Chapter 3 shows how the Scottish practice of travelling to be educated in the professions profoundly influenced the development of the early Scottish Enlightenment. The Netherlands was a centre of radical ideas and of publishing and some Scots, including Areskine, continued on from there to Germany and Italy to further enhance their social and academic qualifications. When they returned to Scotland, it was with new ideas, key texts, and a network of international contacts in the Republic of Letters. Their programmes of lectures abroad depended upon the use of set textbooks, and these became the beginnings of the libraries they would go on to collect throughout their lives, accompanying them in legal practice throughout their careers.

Chapter 4 describes how on their return from their legal and cultural travels learned Scots helped encourage the growth of the increasingly busy book markets of London and Edinburgh. Book buyers used catalogues, sales, and auctions to build their collections. Areskine's patron Archibald Campbell, earl of Ilay, accumulated a large library and set an example for those in his circle. Agents, booksellers, and librarians such as Alexander Cunningham and Thomas Ruddiman helped buyers tap into international and national markets. Book auctions helped circulate foreign-produced legal texts throughout the Scottish legal community. A bookseller's records show that Areskine attended the auction of the law books of Alexander Seton of Pitmedden and made several purchases. Legal texts and other books moved between members of Scotland's well-educated and socially active community of advocates until they came to be kept and recorded in private libraries collected by lawyers with an eye on their family legacies.

Chapter 5 considers the different types of law books that Areskine had in his library. Alongside his style books and collections of Acts of Parliament, Areskine had works of serious scholarship in civil law and natural law. The reliance on Roman law in Scotland in the early modern era led to the development of a "mixed" legal system. Areskine had been the first Regius Professor of the Law of Nature and Nations at Edinburgh and he retained his interest in the subject, collecting the works of Grotius, Pufendorf, and their followers. Natural law was also greatly influential in early eighteenth-century Scotland and found its way into key works by Scottish jurists. It inspired the development of not only Scots law but also the wider philosophies of the Scottish Enlightenment.

Interest in English law grew in Scotland after the Union of 1707. Legal books carried ideas across regions and borders and their readers interpreted, grafted, or wove them into their own legal systems as these developed across Europe throughout the early modern era. Scottish lawyers exploited books to find the best arguments to present in court but their deep knowledge of legal authorities and Classical history spilled out beyond the courts and into Edinburgh's intellectual community.

Chapter 6 explores the importance of the Advocates Library as a model book collection for Scottish lawyers (especially in Edinburgh) from the 1680s on. The Faculty of Advocates included non-legal books from their library from the start and so did private legal collectors. Areskine collected substantially in many subjects beyond law with some of the most notable themes being history, religion and secularism, modernisation and the state of Scotland, and ancient and modern poetry. These themes were all important to the development of the Scottish Enlightenment's progressive ethos. This chapter describes Areskine's polite learning within the contexts of the Union of 1707 and the growth of North-British culture.

Chapter 7 establishes the links between books and sociability in the legal community of early eighteenth-century Scotland. By organising his library, the ancient Roman advocate Cicero felt that he had given his house a soul. Eighteenth-century Scottish lawyers agreed with this idea. Prominent legal families created libraries for their collections and used them not just as places to keep books but also as social meeting places and drawing rooms. Several notable Scottish legal libraries were built by Areskine's contemporaries, including those created at Arniston for the Dundas family and at Newhailes for the Dalrymples. The creation of a library catalogue was an indication of a desire not just to find but to lend books. This chapter considers the physical space of the library as the centre of an enlightened gentleman's life with special reference to the Scottish legal community. The library kept by Areskine's wife Grisel Grierson is also considered as are the books collected by Areskine's sons Charles and James Erskine.

Chapter 8 explores the Alva Collections housed in the National Library of Scotland and the Advocates Library in Edinburgh. These collections are made up of books from Areskine's library and those from his son Lord Alva's library. Provenance information found in some of the books has allowed for tracing their histories both before and after they were part of the Areskine family library.

The conclusion argues that Scottish lawyers, especially in their activities relating to books, played a prominent role in the development of the Scottish

Enlightenment. Eighteenth-century Scottish lawyers offered patronage, sponsored writers, bought books, built libraries, and joined new institutions and clubs. Their financial backing encouraged scholars, philosophers, and poets and supported the achievements of the Scottish Enlightenment. Lawyers' intellectual interests and their study of early modern natural law and its ethical importance and moral implications shaped the sceptical rational thinking that characterised the period. Meanwhile, their continuing exploration of Roman and European law and its classical, medieval, and modern contexts influenced modern Scots law. Scottish lawyers combined ancient and modern ideas to create coherent and workable systems of thinking based on reason. Their practice of importing laws rendered them particularly comfortable with exploring new ideas in other areas of intellectual endeavour. Lawyers were integral to and integrated with the Scottish society that allowed the Scottish Enlightenment to take root and flourish within Charles Areskine's lifetime.

## An Enlightened Advocate's Library

A private library is part of its owner's biography: the known facts of his life may help in the understanding of his books. The converse may also be true: his choice of books may add to the understanding of the known facts of his life.<sup>1</sup>

### Charles Areskine of Alva: Life and Legal Career

Charles Areskine of Alva (1680–1763) started life as the youngest son of a baronet. Areskine is a notable figure of the early years of the Scottish Enlightenment since he began his career, not in legal, but in academic circles. He was a regent (tutor) at the University of Edinburgh from 1701 when he was barely out of his teens. From 1707 to 1711 he studied law in the Netherlands in part to have the expertise needed to hold the newly established Regius Chair of the Law of Nature and Nations at the University of Edinburgh which he occupied until 1734. Areskine became an advocate in 1711 and he attained high positions in the Scottish legal establishment becoming Solicitor General (1725–1737), Lord Advocate (1737–1742), and Lord Justice Clerk (1748–1763). He was appointed to the bench as Lord Tinwald in 1744.<sup>2</sup>

Areskine engaged with many aspects of the intellectual culture of his age as a traveller, politician, a friend to philosophers, patron of the arts and sciences, and book collector. That Areskine maintained the scholarly interests he engaged with as an educator is demonstrated by the large private library he collected throughout his life. His contemporaries recognised and admired his scholarship, culture, and erudition. John Ramsay of Ochtertyre included

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<sup>1</sup> T.A. Birrell, "Reading as Pastime: The Place of Light Literature in Some Gentlemen's Libraries of the 17th Century", in Robin Myers and Michael Harris (eds), *Property of a Gentleman: The Formation, Organisation and Dispersal of the Private Library, 1620–1920* (Winchester: St Paul's Bibliographies, 1991), 118.

<sup>2</sup> John W. Cairns, "The Origins of the Edinburgh Law School: The Union of 1707 and the Regius Chair", *Edinburgh Law Review*, 11 (2007), 300–48 and his, "Erskine, Charles, Lord Tinwald (bap. 1680, d. 1763)", *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/8847>> accessed 16 Jan. 2009. In this book, I use the spelling of his name that Areskine used as his signature and on his bookplates.

Areskine in his tribute to the Scottish great and good, *Scotland and Scotsmen in the Eighteenth Century*, describing him as

...not only an eminent lawyer and judge, but likewise a polite scholar, and an elegant speaker and writer.... This gentleman was possessed of excellent talents, which were improved by culture, and set off to great advantage by a graceful persuasive eloquence in a strain peculiarly his own.<sup>3</sup>

Ramsay also speculated that Areskine, despite his scholarly reputation in a golden age of Scottish literature, had been too busy to leave a legacy of written works since:

Statesmen in power, and judges that make conscience of their duty, seldom think either of writing books or of attending to language, further than it serves to convey their ideas. It was therefore want of leisure which prevented this accomplished man from making a figure as an author.<sup>4</sup>

Areskine was indeed a busy man and he enjoyed a varied and profitable legal career. After being admitted advocate on 14 July 1711 he "came almost immediately into great practice", was soon known as "a very powerful and successful pleader",<sup>5</sup> and was made advocate-depute by royal commission in 1714. He continued to practice with great success and in May 1725 he was appointed solicitor-general with the privilege of speaking within the Bar.<sup>6</sup> He remained solicitor-general until 1737 when he became Lord Advocate.

Areskine also had a political career from the 1720s to the 1740s. He was elected to parliament as MP for Dumfriesshire in 1727 and 1734.<sup>7</sup> He seems to have only spoken twice in parliament: first to defend his patron Archibald Campbell, the earl of Ilay's plans for electing representative peers for Scotland in 1735 and again in 1737 to object to a bill designed to punish Edinburgh for its Porteous riots of 1736.<sup>8</sup> He was elected for the Tain Burghs in 1741 but lost

<sup>3</sup> John Ramsay, of Ochtertyre, *Scotland and Scotsmen in the Eighteenth Century*, ed. Alexander Allardyce, 1 (Edinburgh: William Blackwood and Sons, 1888), 100–01.

<sup>4</sup> Ibid. 106.

<sup>5</sup> Ibid. 101.

<sup>6</sup> George W.T. Omund, *The Lord Advocates of Scotland: From the Close of the Fifteenth Century to the Passing of the Reform Bill*, 2 (Edinburgh: D. Douglas, 1883), 1–2.

<sup>7</sup> Ibid. This was one of thirty county seats for Scotland between 1707 and 1832. Ronald M. Sunter, *Patronage and Politics in Scotland, 1707–1832* (Edinburgh: John Donald, 1986), 236.

<sup>8</sup> Romney Sedgwick, *The House of Commons, 1715–1754*, 1: *Introductory, Survey, Appendices, Constituencies, Members A-D* (London: HMSO, 1970), 420.

his seat when the election was declared void in March 1742.<sup>9</sup> He resigned his position as Lord Advocate at the same time and returned to full-time legal practice.<sup>10</sup>

Areskine continued his legal practice until space was found for him on the Bench in 1744. Lord Bankton's near-contemporary description of a judge from the time of his appointment as Lord Tinwald offers some insights about the characteristics he needed to perform this role:

It is jurisdiction alone that creates a judge; but divers good qualities are necessary to accomplish him for the right exercise of the office. He ought to be skilful in the laws, by which he is to judge; a man of integrity, courage, and constancy, that he may do full law and justice to poor and rich, without fraud or guile, as our law speaks.<sup>11</sup>

Areskine succeeded his fellow Ilay client Lord Milton as Lord Justice Clerk in 1748.<sup>12</sup> He played an active role in drafting and enforcing reform legislation such as the abolition of military tenure and heritable jurisdictions.<sup>13</sup> As Lord Justice Clerk, Areskine held the second highest position in the Scottish legal establishment: he led the Court of Justiciary and deputised as Lord President at the Court of Session.<sup>14</sup> Areskine's responsibilities went beyond judging in the courts. He was deeply involved with the suppression of Jacobitism since one of his duties was ensuring Scottish homeland security. He was in constant communication with Ilay and other officials at Westminster as he responded to

<sup>9</sup> Ibid.; Omund, *Lord Advocates* 2. The Tain Burghs were Tain, Kirkwall, Dingwall, Dornock, and Wick. The seat was one of fifteen burgh seats in Scotland between 1707 and 1832. Sunter, *Patronage*, 237.

<sup>10</sup> Omund, *Lord Advocates*, 3.

<sup>11</sup> Andrew MacDowall, Lord Bankton, *An Institute of the Laws of Scotland in Civil Rights: With Observations upon the Agreement or Diversity between Them and the Laws of England. In Four Books. After the General Method of the Viscount of Stair's Institutions*, 2 (Edinburgh: Printed by R. Fleming, for A. Kincaid and A. Donaldson, 1753), 479.

<sup>12</sup> Omund, *Lord Advocates*, 3.

<sup>13</sup> For these see John W. Cairns, "Attitudes to Codification and the Scottish Science of Legislation, 1600–1830", *Tulane European and Civil Law Forum*, 22 (2007), 1–78 at 28.

<sup>14</sup> For examples of his deputising in 1748 and 1753 see *The Acts of Sederunt of the Lords of Council and Session, from the 15th of January 1553, to the nth of July 1790* (Edinburgh: Printed by Neill and Company, for Elphinstone Balfour, 1790), 415, 470 where "Ch. Areskine I.P.D" signs Acts of Sederunt. There was no Lord President between 26 Aug. 1753 and 2 Feb. 1754: the Lords of Session appointed acting presidents for a week at a time during this gap. Brian Dempsey, "The Marriage (Scotland) Bill 1755", in *Miscellany Six by Various Authors*, ed. Hector L. MacQueen (Edinburgh: Stair Society, 2009), 75–119 at 89.

threats of invasion and Jacobite plots throughout the 1750s. The threat of a French invasion was real in the years after Culloden. Areskine was at the centre of an information gathering system made up of his network of contacts across Scotland. In response to intelligence from the duke of Newcastle in 1750, for example, Areskine

despatch't [a letter] into the remoter highlands, to gentlemen who I know will be zealous, and have the best access, to receive information & what is a doing among the deluded animals there, what their hopes of an Invasion are, or if they have received any fresh Supplys from abroad.<sup>15</sup>

Areskine regularly reported to London on the effects that Westminster-driven laws and policies had in Scotland throughout his time as Lord Justice Clerk. This was especially the case for instruments designed for the suppression of Jacobitism. Areskine wrote, for example, to Philip Yorke, earl of Hardwick and Lord High Chancellor of Great Britain in 1750, to say that the

law prohibiting the Highland dress has as universally been complied with as...could well have been hoped for: education, inveterate custom, some conveniency to such as live among the mountains from that manner of clothing themselves, actually made them averse to the alteration: however, though in remote parts where inclination and hopes of impunity concur, in this, as in other crimes, there will be offenders; yet by holding a watchful eye over them, I'm persuaded the statute may, in very little time, have its full and desirable effect.<sup>16</sup>

In 1752, Areskine stood aside to give his patron Archibald Campbell the management of the Appin murder trial. Campbell had the right to act as Lord Justice General for Scotland and when one of his clan members was murdered, he chose to preside over the trial. This too, was an anti-Jacobite event since those accused of the crime were Jacobites who opposed the Campbell interest. Robert Louis Stevenson later immortalised the events surrounding the case

<sup>15</sup> Charles Areskine, "Letter" (21 Apr. 1750), ff. 141–41v. For a detailed study of the government's activities in the years after Culloden and Areskine's role as Lord Justice Clerk, see Byron Frank Jewell, "The Legislation Relating to Scotland after the Forty-five", PhD. diss. (University of North Carolina, 1975).

<sup>16</sup> Charles Areskine, quoted in Philip Yorke, *The Life and Correspondence of Philip Yorke, Earl of Hardwicke, Lord High Chancellor of Great Britain*, ed. Philip C. Yorke (Cambridge: CUP, 1913), 618.

and its aftermath – including Areskine's acquiescence – in his novel *Kidnapped* and its sequel *Catrina*. For the most part, however, Areskine was an active legal official. Later in the decade, Areskine sent warrants to arrest rioters in Dumfries in 1759 and as Lord Justice Clerk, presided over their trials in Edinburgh in 1760.<sup>17</sup> His role meant that he also worked with English authorities to bring criminals to justice. The earl of Holderness, for example, enclosed a copy of a message from the London magistrate Henry Fielding asking for Areskine's help in getting evidence against "Page the Highwayman" in 1758. Fielding needed "Johnston the Waiter at a Coffee House" to go to London to testify and was "persuaded that Johnston will obey Lord Justice Clerk's Directions in the Affair".<sup>18</sup>

Areskine participated in important social and legal developments during his tenure as Lord Justice Clerk. These included helping to draft new legislation such as the Marriage (Scotland) Bill 1755 which attempted "to abolish irregular and clandestine marriages and introduce for the first time a requirement for parental consent" and for which Areskine acted as the main point of contact between Lord High Chancellor Hardwicke and the Scottish Lords of Session.<sup>19</sup> He was one of the most regular attendees at the meetings of the Commissioners of Annexed Estates between 1755 and 1760.<sup>20</sup> Areskine was a skilled negotiator and politician who maintained his position and influence by cooperating with different parties. After his appointment as Lord Justice Clerk, Areskine "made great efforts to be all things to all factions, especially the English".<sup>21</sup> Although involved in his legal and political duties, he maintained his reputation for learning. His patron Ilay certainly made use of his knowledge. He wrote to Areskine on at least one occasion asking for advice on legal matters saying "let me have your thoughts of these matters & any quotations to the purpose".<sup>22</sup>

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<sup>17</sup> Alexander J. Murdoch, "Politics and the People of the Burgh of Dumfries, 1758–1760", *Scottish Historical Review*, 70 (1991), 151–71 at 167–68.

<sup>18</sup> Henry Fielding, "Letter" (22 Jan. 1758/9), NLS, MS 5080, f. 7. Evidence given at his trial at the Old Bailey indicates that Page had travelled to Scotland between various highway robberies performed near London with accomplices. The trial record does not mention Johnston. Page was acquitted. See "Trial of William Page, otherwise Williams, otherwise Gage, February 1758", *Old Bailey Proceedings Online* <[www.oldbaileyonline.org](http://www.oldbaileyonline.org)> accessed 19 Nov. 2011, t17580222-28.

<sup>19</sup> Dempsey, "Marriage (Scotland) Bill", 76 and *passim*. The relevant correspondence between Areskine and Hardwicke is at 111–19.

<sup>20</sup> Alexander Murdoch, "*The People Above*: Politics and Administration in Mid-Eighteenth-Century Scotland (Edinburgh: John Donald, 1980), 78–79.

<sup>21</sup> Ibid. 37.

<sup>22</sup> Archibald Campbell, "Letter" (n.d.), NLS, MS 5087, f. 197.

## Scottish Advocates in Society

Areskine's successful legal career gave him status as a member of an elite group in Scottish society. His descent from a landed family certainly helped him to achieve this status but his position as an advocate and judge put him at the centre of Edinburgh's elite professional class. This professional success and the personal wealth he gained from it allowed him to act as an influential patron in the early years of the Scottish Enlightenment. Professional advocates existed in Scotland from the fifteenth century and their numbers grew as Scotland's landed classes increasingly turned to the evolving system of central courts to resolve their disputes.<sup>23</sup> As they shaped Scots law, advocates developed their position in society. After 1707, when many Scottish nobles turned their attention to London, advocates, along with other educated professional men including physicians and solicitors, stepped in to take their place as patrons and leaders of Scottish society.<sup>24</sup> Advocates, many of whom, including Areskine, had connections with landed gentry families, had the status needed to influence the politics and society of early eighteenth-century Scotland.

Advocates came to see themselves as a new type of Scottish nobility. They liked to model themselves on lawyers of the Roman Republic like Cicero and Cato and they believed that the superior educations they obtained in order to practice law entitled them to play their leading role in society. Their civilian learning instilled in them a sense of virtue and this in turn gave them a noble status which allowed them to behave in trustworthy, civil, rational, and self-controlled ways.<sup>25</sup> Lawyers trained and examined in civil law achieved honour and status: their position was secure as members of "a pan-European legal culture, a *Republica Jurisconsultorum*"<sup>26</sup> and the "history of Roman law gave them

<sup>23</sup> John Finlay, "Ethics, Etiquette and the Early Modern Scots Advocate", *Juridical Review* (2006), pt. 2, 147–78 at 148; Alexander Murdoch, "The Advocates, the Law and the Nation in Early Modern Scotland", in *Lawyers in Early Modern Europe and America*, ed. Wilfrid Prest (London: Croom Helm, 1981), 147–63 at 148.

<sup>24</sup> N.T. Phillipson, "Lawyers, Landowners, and the Civic Leadership of Post-Union Scotland: An Essay on the Social Role of the Faculty of Advocates 1661–1830 in 18th Century Scottish Society", *Juridical Review*, new ser., 21 (1976), 97–120 at 110.

<sup>25</sup> Finlay, "Ethics", 155–56. For the prominent role lawyers played in various parts of early modern Europe, see William J. Bouwsma, "Lawyers and Early Modern Culture", *American Historical Review*, 78 (1973), 303–27.

<sup>26</sup> John W. Cairns, "The Formation of the Scottish Legal Mind in the Eighteenth Century: Themes in Humanism and Enlightenment", in *The Legal Mind: Essays for Tony Honoré*, ed. Neil MacCormick and Peter Birks (Oxford: Clarendon, 1986), 253–77 at 260.

the Roman jurist and the Roman orator as models for their profession".<sup>27</sup> Their equivalent scholars of Scots law, however, needed to be vetted for "integrity and honest deportment" before they could join the Faculty of Advocates.<sup>28</sup>

In a chapter on "Some Considerable Questions Concerning Precedency, Resolved", in his *Works* published in 1722, Sir George Mackenzie declared that "an advocate is noble by his Profession".<sup>29</sup> Advocates took their duties as society's leaders seriously. They built and furnished country houses and sponsored artists and authors as demonstrations of their influence and status in Scottish society. Eighteenth-century judges took on executive roles "as members of the various commissions the government appointed to sit in Edinburgh, most notably the Commissioners for the Annexed Estates and the Board of Trustees for the Encouragement of the Fisheries and Manufactures of Scotland".<sup>30</sup> Judges also "led society and set the tone of metropolitan Edinburgh".<sup>31</sup>

Professional success and the powerful patronage of the earl of Ilay placed Charles Areskine at the top of the early eighteenth-century legal profession. By the time he died in 1763 he had been a judge for nineteen years and Lord Justice Clerk for fifteen. Like his fellow members of the legal elite, the Barons of the Exchequer and the Lords of Session, Areskine was able to pursue gentlemanly activities. For some law lords, such as Henry Home, Lord Kames, these included writing books about topics of interest, legal and otherwise, for their fellow participants in the Scottish Enlightenment.<sup>32</sup> Others, such as John Clerk of Penicuik expressed their elite belonging by building new houses to reflect their status and taste. These lawyers' residences included spaces to keep books. Many members of Scottish legal elite assembled impressive private libraries that demonstrated their legal learning – and hence their noble and virtuous

<sup>27</sup> John W. Cairns, "Alfenus Varus and the Faculty of Advocates: Roman Visions and the Manners that were Fit for Admission to the Bar in the Eighteenth Century", in *Jus commune: Zeitschrift für Europäische Rechtsgeschichte*, 28 (2001), 203–32 at 207.

<sup>28</sup> Ibid. 257.

<sup>29</sup> George Mackenzie, *The Works of that Eminent and Learned Lawyer, Sir George Mackenzie Of Rosehaugh, Advocate to King Charles II. and King James VII. With Many Learned Treatises of His, Never before Printed*, 2 (Edinburgh: Printed and publish'd by James Watson, 1722), 584. Physicians also had "a Right to...Armours". This was because neither profession was a "Trade".

<sup>30</sup> Murdoch, "Advocates", 153.

<sup>31</sup> Ibid.

<sup>32</sup> Areskine had six books by Kames in his library. See Karen Grudzien Baston, "The Library of Charles Areskine (1680–1763): Scottish Lawyers and Book Collecting, 1700–1760", PhD. diss. (University of Edinburgh, 2012), appx A, available at <https://www.era.lib.ed.ac.uk/bitstream/1842/6417/3/BastonAppendices.pdf>.

attributes – as well as their membership in the polite society of enlightened Scotland.

Two elite groups in Scottish professional society, physicians and advocates, were known as book collectors. Members of both groups started their book collecting while undertaking educational grand tours. Legal students needed textbooks to complete their courses on Roman and natural law. Their exposure to continental culture also encouraged them to acquire works by classical authors, historical works, travel guides, dictionaries, and guides to grammar.<sup>33</sup> Although books on legal topics were widely available in Britain during the early decades of the eighteenth century, many advocates preferred to start collecting their libraries in person as they travelled throughout Europe.

### Scottish Law Libraries

The nature of the Scottish legal library was changing when Areskine was a student. Scottish legal libraries of the late seventeenth and early eighteenth centuries included large selections of books on Roman law which was “viewed as a universal superior law”.<sup>34</sup> But even as Areskine assembled his collection, the focus of legal theory was changing in Scotland. Although they continued to use Roman law alongside the Scottish tradition, lawyers were increasingly interested in the laws of nature and nations. Areskine’s own appointment as the Regius Chair of the Law of Nature and Nations at Edinburgh in 1707 reflects this new emphasis. Scottish advocates also turned to the customary laws of the continent, Roman law’s relationships with the local laws they had studied in the Low Countries, and English law.

The Union of 1707 caused early eighteenth-century Scottish lawyers to analyse and assess the intellectual traditions of Scots law. Sources of native Scottish law had been combined with the Roman tradition to create the “Roman-Scots” law of Stair and Mackenzie “in which ‘native’ material and Roman material were blended, rationalised and validated by the law of nature”. This blend was designed to show that Scotland had its own sovereignty and authority and that

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33 Kees van Strien and Margreet Ahsmann, “Scottish Law Students in Leiden at the End of the Seventeenth Century: The Correspondence of John Clerk, 1694–1696”, *LIAS*, 19 (1992), 271–330; Kees van Strien and Margreet Ahsmann, “Scottish Law Students in Leiden at the End of the Seventeenth Century: The Correspondence of John Clerk, 1694–1696”, *LIAS*, 20 (1993), 1–65.

34 John W. Cairns, “Law Books, 1707–1918”, in *The Edinburgh History of Scottish Literature, 2: Enlightenment, Britain and Empire (1707–1918)*, ed. Susan Manning (Edinburgh: EUP, 2007), 191–97 at 191.

its law was distinct from English law. After the Union, interest in the English tradition increased.<sup>35</sup> By the end of the eighteenth century, “intellectually Scots looked more...to London than to Continental Europe”.<sup>36</sup> Scottish advocates of the early eighteenth century created libraries that held information about the competing concerns and theories that dominated the legal study and practice of their transitional time. Books held the answers that Scottish lawyers sought for both the theory and the practice of their profession.

### *The Faculty of Advocates and its Library*

The Advocates Library was created to provide a service for the elite legal professionals of Edinburgh and the advocates' need for accessible legal texts partly inspired the foundation of their institutional library in the 1680s. Thomas I. Rae has identified three key factors for the library's foundation. The first of these was the “growth of a corporate sense among the members of the Faculty” which was enhanced by close family and professional links. The second was an increased interest in “books and book learning” among members of their elite social class. The third was a concern for improving the standard of legal education available in Scotland so as to reduce the necessity – and cost – of educational trips to the continent.<sup>37</sup> Although the leading figure in the development of the Advocates Library, Sir George Mackenzie, saw it as a source of training and reference materials for lawyers, the new library soon included books about other subjects which interested its educated gentlemanly clientele and history, poetry, and *belles lettres* books joined their legal fellows on its shelves.<sup>38</sup>

The foundation of the Advocates Library had an impact on the Edinburgh book trade. Booksellers, agents, binders, and printers all benefitted from the new institution's arrival.<sup>39</sup> Booksellers imported the foreign books that they knew the Advocates Library wanted to stock and imports from the Low Countries became common. Before the booksellers took action, the Library had used students as agents for purchasing foreign books and, as late as 1713, the Faculty commissioned a student at Leiden, Patrick Haldane, to buy books while there.<sup>40</sup> The Advocates Library was their major customer but private

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35 Ibid. 191–93.

36 Cairns, “Attitudes”, 56.

37 Thomas I. Rae, “The Origins of the Advocates Library”, in *For the Encouragement of Learning: Scotland's National Library, 1689–1989*, 1–22 at 16.

38 Ibid. 18–19.

39 Brian Hillyard, “The Formation of the Library, 1682–1729”, in *For the Encouragement of Learning: Scotland's National Library, 1689–1989*, ed. Patrick Cadell and Ann Matheson (Edinburgh: HMSO, 1989), 23–66 at 33.

40 Ibid. 34, 57.

buyers also benefitted from the booksellers' entrepreneurial impulse and they also had opportunities to purchase foreign books at the booksellers' shops and auctions. The presence and enlargement of the Advocates Library increased the availability of books for private book collectors in Edinburgh.

### *Scottish Lawyers' Private Libraries*

Both the creation of the Advocates Library and Charles Areskine's private library signify a wider tradition of book collecting in the Scottish legal profession. The advocate Clement Litill, who bequeathed his books to the University of Edinburgh to start its library in 1580, was one of the first legal bibliophiles known in Scotland. John Scot of Scotstarvit, Alexander Seton, Lord Pitmedden (1639?–1719), and John Lauder, Lord Fountainhall (1646–1722), were among the serious collectors of legal books throughout the seventeenth century.<sup>41</sup> The libraries of Pitmedden and Fountainhall are well-documented as are the libraries of John Spottiswoode of that Ilk (1667–1728) and Alexander Bayne of Rires (c. 1684–1737).

Sir Alexander Seton of Pitmedden's library was sold at auction on 11 January 1720. The auction was made up of 3,000 lots and included the law books Pitmedden had used to write his own legal work, *Mutilation and Demembration*, an appendix to Mackenzie's *Matters Criminal*, along with an impressive selection of books on theology, medicine, mathematics, and philosophy. Buyers at the sale included the Advocates Library, the Advocates' Librarian Thomas Ruddiman – who bought for his private collection as well as representing the Advocates Library, John Erskine of Carnock, and John Spottiswoode.<sup>42</sup> Areskine bought ten books at the auction all of which went on to appear in his list of 1731.

Pitmedden's son-in-law John Lauder of Fountainhall was also a serious book collector. Fountainhall studied law in France and visited Brussels, Antwerp, and Leiden as part of a three year continental tour.<sup>43</sup> By the time he returned to Scotland in 1667, Lauder had a library of 536 books which he recorded before his admission into the Faculty of Advocates. Between 1667 and 1679, he acquired another 456 titles which he recorded in a second list. Most of the books on the first list came from France but there are also books published in London and Oxford both of which he visited on his way back to Edinburgh.

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<sup>41</sup> Rae, "Origins", 12–13.

<sup>42</sup> Douglas J. Cusine, "Sir Alexander Seton of Pitmedden", in *Miscellany Six by Various Authors*, ed. Hector L. MacQueen (Edinburgh: Stair Society, 2009), 29–44 at 36, 41–2.

<sup>43</sup> David Allan, "Lauder, Sir John, Second Baronet, Lord Fountainhall (1646–1722)", *ODNB* (Oxford: OUP, Sept. 2004) <<http://www.oxforddnb.com/view/article/16115>> accessed 5 Aug. 2010.

Lauder's post-1667 books were mostly acquired in Edinburgh as gifts, exchanges, or purchases. Lauder's law library was extensive and included "the standard commentaries and glosses on the civil and canon law, the works of Alciatus and Cujacius, and the numerous writings of Faber, Zoesius, Perezius, Vinnius and Wesenbachius". Lauder also had works on English common law and Scots law but his library was not made up exclusively of legal texts: he had works by classical authors, selections of modern theology, historical works, philosophical works, modern drama, and poetry.<sup>44</sup>

John Spottiswoode of that Ilk came from another distinguished legal family. His father was an advocate and his grandfather had been President of the College of Justice. Spottiswoode began his own legal career as an apprentice to a writer to the Signet but ultimately decided to become an advocate. He travelled to Leiden in 1692 and studied law with the professors Gerard Noodt and Philippus Reinhardus Vitriarius before returning to Scotland to be admitted to the Faculty of Advocates on 24 December 1696.<sup>45</sup> Spottiswoode was successful at the Bar but in 1702 he also started to teach classes in Scots and Roman law. He published his own textbooks for the use of his students including *Introduction to the Knowledge and Style of Writs* (1708) and *The Form of Process, before the Lords of Council and Session* (1711). He used George Mackenzie's *Institutions of the Law of Scotland* for his Scots law course. For Roman law, he used Boeckelmann's *Compendium Institutionum Justiniani*.<sup>46</sup>

Spottiswoode's interest in books was reflected in three ways. He ran his own printing house from which he issued his grandfather Robert Spottiswoode's *Practicks* (1706) and various publications on current debates and events. Spottiswoode's printing venture was, however, short lived and he sold his printing business to the bookseller Robert Fairbairn in 1706.<sup>47</sup> Spottiswoode was Keeper of the Advocates Library from 1702 to 1728.<sup>48</sup> Finally, Spottiswoode kept a private library which was auctioned after his death in 1728.<sup>49</sup> Areskine may

<sup>44</sup> Rae, "Origins", 13.

<sup>45</sup> John W. Cairns, "Spottiswoode, John, of that Ilk (1667–1728)", *ODNB* (Oxford: OUP, Sept. 2004) <<http://www.oxforddnb.com/view/article/26168>> accessed 29 July 2010.

<sup>46</sup> Cairns, "Spottiswoode". Areskine owned all of these as well as the Spottiswoode titles.

<sup>47</sup> Brian Hillyard, "Thomas Ruddiman: Librarian, Publisher, Printer and Collector", in *From Compositors to Collectors: Essays in Book-Trade History*, ed. John Hinks and Matthew Day (New Castle, DE; London: Oak Knoll Press; British Library 2012), 83–107 at 87.

<sup>48</sup> Cairns, "Spottiswoode". With the very able Thomas Ruddiman on hand as his Under-Keeper, Spottiswoode seems have played little role. See Hillyard, "Formation", 42–43.

<sup>49</sup> Alexander Davidson, *A Catalogue of Curious and Valuable Books, being the Library of Mr. John Spottiswood of that Ilk Advocate, Lately Deceas'd. To be Sold by Way of Auction in the High Exchange, on Munday the first day of July 1728* (Edinburgh, 1728).

have been a buyer at the Spottiswoode auction. His copy of Simon van Leeuwen's *Censura forensis theoretico-practica* (Leiden, 1678), now in the Advocates Library's Alva Collection (Alva Coll., 58), contains the inscription "Ex bibl. apud Spottiswude". Areskine had several books by Spottiswoode. Libraries like Spottiswoode's were full of titles desired by other advocates and the posthumous sales of them provided an opportunity for legal collectors to develop their libraries.

Spottiswoode's pupil, Alexander Bayne of Rires, followed him as an advocate and teacher. Bayne studied with Spottiswoode in Edinburgh in 1704 before travelling to Leiden in 1706. He also took an interest in English law and was admitted into Lincoln's Inn in 1707. While in London, Bayne was part of the cultured set centred on Richard Steele and Joseph Addison. He was back in Scotland by 1714 when he was admitted advocate. He was elected as professor of Scots law in 1722 and, like his mentor Spottiswoode, was a successful teacher. Also like Spottiswoode, Bayne published books for his students' use including *Notes for the Use of Students of the Municipal Law* (1731) and, as an appendix to his edition of Hope's *Minor Practicks* of 1726, *A Discourse on the Rise and Progress of Law in Scotland and the Method of Studying It*.<sup>50</sup> Bayne's interests in literature, culture, and music were evident in the extensive library he collected which was sold in Edinburgh in 1749.<sup>51</sup>

The libraries collected by Seton, Lauder, Spottiswoode, and Bayne show that, while their libraries were rich in legal books, their other books showed an engagement with intellectual and cultural pursuits beyond their professional concerns. Their libraries contained the books they needed professionally as lawyers and teachers. These included reference books and commentaries for civil and Scots law. Their libraries all contained books relating to polite learning and society, including poetry, drama, and music, and modern concerns, including history and the natural sciences. From this we can infer that early eighteenth-century Scottish lawyers actively participated in the intellectual concerns of their time. When their collections were sold or passed to the next generation after their deaths, they left legacies of cultural heritage as well as legal knowledge.

<sup>50</sup> John W. Cairns, "Bayne, Alexander, of Rires (c.1684–1737)", *ODNB* (Oxford: OUP, Sept. 2004; online edn, Jan. 2007) <<http://www.oxforddnb.com/view/article/1774>> accessed 29 July 2010.

<sup>51</sup> Alexander Kincaid, *A Catalogue of Curious and Valuable Books, Being Chiefly the Library of the Late Mr. Alexander Bane Professor of Scots law in the University of Edinburgh. Which will begin to be Sold by Auction, on Wednesday the 22d of February 1749...at the Auction-House Opposite to the Parliament-Close* (Edinburgh, [1749]).

## Areskine's Library Catalogue

We should think of these libraries not so much as mirrors of the particular interests of their owners, but more as platforms or springboards from which their own ideas and perceptions of the world developed.<sup>52</sup>

A shelf list giving the contents of Charles Areskine's library dated 1731 survives in the National Library of Scotland (NLS) as MS 3283. The Faculty of Advocates, which had been presented with it by the Rector of the Dollar Academy, deposited the catalogue in the NLS in 1942. The quarto volume is bound in calf and has 222 pages.<sup>53</sup> An inscription at the head of its first leaf identifies and dates the manuscript as: "Catalogüs Librorūm D. D<sup>m</sup>i. Caroli Areskine de Barjarg, Regiarūm Causarum Procuratoris. 1731". Areskine had acquired lands at Barjarg in Dumfriesshire upon his marriage to the heiress Grisel Grierson of Barjarg in 1712 and he had become Solicitor General in 1725.

It is impossible to say how much part Areskine took in development of the catalogue since the manuscript is not in his distinctive hand and several writers added to it. Entries were added in different hands and in different inks over time. External evidence suggests a close involvement. The manuscript is described in Areskine's son's library catalogue as "Catalogus librorum D. D<sup>m</sup>i Caroli Areskine ab Alva, e quaestoribus rerum Criminalium ordinariis primarii, perseipsum digestus M.S." and especially the words "perseipsum digestus" – translated as "set out by him" or "arranged by him himself" – may imply that Areskine himself was at the very least the organiser of the project of recording his books.<sup>54</sup> It is likely that Areskine set his various legal clerks the task of recording his book acquisitions over the years since the hands resemble those of legal clerks. Areskine's 1731 book list gives details for 1,290 titles divided by size: folio, quarto and "Octavo et *infra*". Each grouping by size is broken down into books on legal topics, which are not given descriptive headings, and "Libri

<sup>52</sup> David Pearson, "Patterns of Book Ownership in Late Seventeenth-Century England", *Library*, 7th ser., 11/2 (2010), 139–67 at 159.

<sup>53</sup> *Catalogue of Manuscripts Acquired since 1925, 2: Manuscripts 1801–4000: Charters and Other Formal Documents, 901–2634* (Edinburgh: HMSO, 1960), 221; NLS, MS 3283. A modern transcription of the catalogue is available from the Edinburgh Research Archive <<https://www.era.lib.ed.ac.uk/handle/1842/6417>>. It is hoped that this will eventually be published along with a transcription of and comparison with of Lord Alva's press catalogue of 1774.

<sup>54</sup> EUL, Centre for Research Collections, ms La.III.755, "Press Catalogue of the Library belonging to Lord Alva" (1774). I am grateful to Dr Brian Hillyard for pointing out the relevance of this phrase to me.

Miscellanei". An alphabetical listing of the collection follows the shelf list and is again divided by size.

It seems Areskine used his catalogue throughout his life. At least five titles, including Lord Kames's *Elements of Criticism* and George Campbell's *Essay on Miracles*, were published in 1762, the year before his death.<sup>55</sup> One title, Hugh Blair's *A Critical Dissertation on the Poems of Ossian: The Son of Fingal* was published in London in 1763 and appears in the manuscript as bound or shelved with an unidentified edition of James Macpherson's *Fingal*. Neither of these titles is dated in the manuscript but they are not the final entries in the miscellaneous quarto section of the manuscript. Areskine or someone acting on his behalf bought books up to his death in April 1763.

### *Early Modern Book Lists*

Early modern book lists had several functions and types. At their most basic level, they were inventories. The original purposes of the various types should be considered when analysing them so that they can be contextualised appropriately. Types of early modern book lists include probate inventories, book trade lists, sale catalogues, private catalogues, lists of banned books, and bibliographies created by their authors to enhance their image.<sup>56</sup> Early modern catalogues give us what David McKitterick has described as "pictures of libraries frozen at a particular moment". These sources must be used carefully since they can "often – perhaps usually – offer only an approximation" of the collections they depict.<sup>57</sup> Printed auction catalogues are especially problematic when they are used to try to recreate collections. Many of the sales included listings of books from multiple owners.<sup>58</sup> Printed stock lists of books on offer from booksellers might also feature books derived from multiple libraries.

55 The other three books were reports of judges' decisions and trial reports.

56 Malcolm Walsby, "Book Lists and Their Meaning", in *Documenting the Early Modern Book World: Inventories and Catalogues in Manuscript and Print*, ed. Malcolm Walsby and Natasha Constantiniou (Leiden: Brill, 2013), 1–24 at 6–10.

57 David McKitterick, "Book Catalogues: Their Varieties and Uses", in *The Book Encompassed: Studies in Twentieth-Century Bibliography*, ed. Peter Davison (Cambridge: CUP, 1992), 182–92 at 165.

58 Ibid. 166. The earliest surviving book auction catalogue dates from 1599 but sales were common well before then. The earliest surviving English institutional catalogue is that of the Cambridge University Library of 1574. Its private equivalent is Sir James Ware's catalogue of 1648. The earliest surviving English printed sale catalogue is Lazarus Seaman's of 1676. Ibid. 163. The poet William Drummond of Hawthornden's library catalogue of 1627 is the earliest Scottish printed example. Brian Hillyard, "Durkan & Ross' and Beyond", in *The Renaissance in Scotland: Studies in Literature, Religion, History and Culture Offered to John*

Written catalogues, such as Areskine's, were more common than their printed equivalents throughout the early modern period and their uses changed over time. They originally acted as inventories but by the seventeenth century the catalogue of a private library could be specifically defined as one "made by or for the owner that is neither an inventory nor an offer of books for sale". Such catalogues served the multiple purposes of recording the owner's holdings and helping the owner or other readers find materials in the collection. They may have also been created to "cater to the owner's vanity".<sup>59</sup>

### *Cataloguing: Early Modern and Modern*

Early modern cataloguers had to make their own decisions about how to record information about their books and where they were kept. Although guides to keeping libraries, such as Gabriel Naudé's *Avis pour dresser une bibliothèque* (1627) and John Evelyn's translation of it, *Instructions Concerning Erecting of a Library* (1661), were widely used by book collectors, there were no set standards for recording bibliographical information. Naudé and Evelyn preferred a cataloguing system based on subject classifications but conceded that books could be organised in any way so long as "they may easily be found".<sup>60</sup> They emphasised that "Order" was essential otherwise the "collection of Books...were it of fifty thousand Volumes...would no more merit the name of a *Library*, than an assembly of thirty thousand men the name of an *Army* unlesse they be martialled in their several quarters".<sup>61</sup> Archibald Campbell's librarian, Alexander Macbean, adopted a subject system of classification, possibly based on French models, for his printed library catalogue of his patron's library. Campbell's categories, which reflected his wide range of interests and expertise, were: theology, history, public law, jurisprudence, Greek and Roman authors, philology, medicine and chemistry, philosophy, mathematics, and miscellaneous.<sup>62</sup> Another of Areskine's contemporaries, the advocate and Lord

Durkan, ed. A.A. Macdonald, Michael Lynch and Ian B. Cowan (Leiden: Brill, 1994), 367–83 at 371.

59 Archer Taylor, *Book Catalogues: Their Varieties and Uses*, 2nd edn, rev. W.P. Barlow (London: St Paul's Bibliographies, 1986), 4.

60 Gabriel Naudé, *Instructions Concerning Erecting of a Library*, trans. John Evelyn (London: Printed for G. Bedle, and T. Collins, at the Middle-Temple Gate, and J. Crook in St. Paul's Churchyard, 1661), 74–75.

61 Ibid. 75.

62 *Catalogus librorum A.C.D.A.* (Glasgow: In aedibus academicis excudebant Robertus et Andreas Foulis, 1758); Roger L. Emerson, *An Enlightened Duke: The Life of Archibald Campbell (1682–1761), Earl of Ilay, 3rd Duke of Argyll* (Kilkerran: Humming Earth, 2013), 104, 108.

of Session Andrew Hume of Kimmerghame, divided his catalogue of 1723 into categories for theology, history, law, politics, philosophy, mathematics and medicine, "Polymatici seu Liberatores", poetry, miscellanies, and "De Re Rustica". The books were not divided by size. Hume's manuscript catalogue, which survives in the NLS, was carefully laid out by his son who left space for additions.<sup>63</sup> The simple arrangement in Areskine's 1731 manuscript by basic categories and sizes would have been frowned upon by Naudé and Evelyn but it was adequate for those who used Areskine's books.<sup>64</sup> The compiler of Areskine's list of 1731 combined the author's name with a short title. This was followed by the place of publication and the date. Named publishers or printers appear in a small number of entries.

Although basic, the information from the manuscript is comprehensive enough for most of the books in the list to be positively identified in modern catalogues and/or national imprint surveys. There are, however, gaps which mean that some of Areskine's books will never be known. An example of the problem can be seen in the two unnumbered entries in Areskine's miscellaneous octavos. The two entries are simply labelled "It.", an indication that the items were in Italian. Beyond this it is difficult to identify what "Eighteen Manuscripts written on fine Vellum of different sizes" and "A Heap of Pamphlets & c." might have been without further information. Fortunately, external evidence offers some clues about them. The Edinburgh bookseller Thomas George Stevenson sold some of Areskine's books in a series of sales in the early 1850s. Stevenson's catalogue of 1852 listed seventy six volumes of pamphlets as part of the sale of law books.<sup>65</sup> David Fate Norton and Mary Norton have provided

63 NLS MS 3552: "Catalogus Librorum Bibliothecae Domini Andreae Hume de Kimmergham Unum [sic] ex Senatoribus Collegia Iusticiae Digestus a Patricio Hume filio sua natu maximo" (1723). For Hume, see George Brunton and David Haig, *An Historical Account of the Senators of the College of Justice from its Institution in MDXXXII* (Edinburgh: Thomas Clark, 1882), 495.

64 Paul Nelles, "The Library as an Instrument of Discovery: Gabriel Naudé and the Uses of History", in *History and the Disciplines: The Reclassification of Knowledge in Early Modern Europe*, ed. Donald R. Kelley (Rochester, NY: Rochester University, 1997), 41–57 at 47. Although I am using it here as a work on library management, Nelles rightly points out that Naudé's *Avis* is much more than that since it was also a statement of an early modern change in attitudes about libraries and how they could be used as tools for generating new knowledge rather than as repositories of old knowledge. For Naudé, the keeper of a library should have an awareness of the contents of his library which went beyond a bibliographical listing of it. *Ibid.* esp. 41–42.

65 Thomas George Stevenson, *Bibliotheca selecta, curiosa et rarissima. Part Second of a General Catalogue of Miscellaneous English and Foreign Books, including Another Portion*

these in an appendix to their work on the libraries of David Hume and his nephew Baron Hume and they found that not all of the items have firm links to the Hume collections.<sup>66</sup> Some of the pamphlets may very well have been Areskine's. There are for example, a set of pamphlets dealing with heritable jurisdictions, a subject he was interested in and involved with in his professional activities, and a collection of trial reports from the years when he practiced as an advocate.<sup>67</sup> However, without the titles, it is impossible to determine which of the pamphlets came from the Hume libraries and which came from Areskine's library.

Areskine's motivation for making his list is not known. He may have had, at least in part, a goal of not only noting the contents of his collection but also of having the ability to share it with visitors. This was an important consideration for book collectors throughout the early modern period.<sup>68</sup> Areskine certainly used his books while writing his pleadings in his legal practice so it may be the case that he used the manuscript to locate citations while composing his Session Papers.<sup>69</sup> The 1731 library list describes the private book collection of a legal professional interested in intellectual matters. The arrangement of the books by size and the careful numbering of the titles indicate that the manuscript was a tool for recording and locating the books on Areskine's shelves.

### Areskine's Library

Areskine, like many of his legal contemporaries, was a bibliophile. His library was well-chosen and well-used and he thought it was important to record its contents. Areskine's library combined books for Scottish legal practice and the books which were useful for participation by educated Scots in the pleasures of civilised society. Their books show that advocates were very much a part of

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*of the Libraries of the Hon. Charles Erskine of Tinwald, Lord Justice-Clerk; James Erskine, Baron of Exchequer, afterwards Lord Barjarg and Alva, and James Erskine, Esq. of Aberdonna; also Selections from the Remarkably Fine Libraries of W.B.D.D. Turnbull, Esq. and Thomas Maitland, Lord Dundrennan* (Edinburgh: Thomas George Stevenson, 1852).

<sup>66</sup> David Fate Norton and Mary Norton, *The David Hume Library* (Edinburgh: Edinburgh Bibliographical Society; NLS, 1996), appx 2.

<sup>67</sup> Ibid. 142, 147.

<sup>68</sup> Walsby, "Book Lists", 9.

<sup>69</sup> For written pleading in eighteenth-century Scotland see Angus Stewart, "The Session Papers in the Advocates Library", in *Miscellany Four by Various Authors*, ed. Hector L. MacQueen (Edinburgh: Stair Society, 2003), 199–223 and David R. Parratt, *The Development and Use of Written Pleadings in Scots Civil Procedure* (Edinburgh: Stair Society, 2006), 1–38.

an international society of scholars. Areskine's manuscript catalogue also shows that he was aware of and interested in European traditions of humanist learning and that he had the intellectual ability to apply his knowledge of the past to contemporary issues.

The survival of Areskine's 1731 library list offers an opportunity to examine and analyse his selections of legal and miscellaneous texts. Areskine's library served a variety of functions. Areskine divided his books into those dealing with legal topics and those which he designated as "miscellanies". The books he thought of as miscellaneous show his participation in the intellectual inquiries and culture of the early Scottish Enlightenment and both sections of his library give evidence for his participation in the wider world of early eighteenth-century book collecting. Areskine needed to create a collection of books which he could use for legal practice and he wanted to have books to enhance his study of the history of law from a humanist perspective. Although legal texts form the bulk of his collection, Areskine also owned books on his evident interests in the natural sciences, mathematics, technology, history, and improvement.

Areskine's books represent the collecting activities of a foremost member of Edinburgh's legal profession in the early to mid-eighteenth century. His library was made up of the books he needed for legal practice but it also included texts related to the development of the Scottish Enlightenment. Areskine and the books he took care to collect must be considered within the contexts of his place and time. Areskine owned many of the interesting, entertaining, and, most importantly, influential texts that characterised the early Scottish Enlightenment. His collection contained books which addressed historiography, religious controversies, and the ideas that inspired the improving impulse in their enlightened readers. Areskine's polite reading, including his selections of poetry, demonstrates his concerns about public life and his interest in current events. His miscellaneous books and the activities they represent provide evidence about Areskine's engagement with enlightened thinking beyond the legal concerns. They are a valuable resource for studying the place and influence of lawyers in the Scottish Enlightenment.

## Two Scholars: Areskine, Aikenhead, and Their Books

Two young Scots had dramatically different experiences of accessing, using and expressing the ideas they encountered in texts as university undergraduates as the seventeenth century came to an end. The student Thomas Aikenhead was executed for blasphemy in Edinburgh in January 1697. Charles Areskine became a regent with responsibility for guiding the moral and intellectual development of his students in 1701. Comparing the experiences of Areskine and Aikenhead reveals much about the state of knowledge and how it clashed with religion among Scotland's educated classes at the turn of the eighteenth century. An exploration of the educational trends, controversies, developments, and opportunities of the late seventeenth and early eighteenth centuries is essential for understanding Charles Areskine's intellectual development and the corresponding growth of his book collection. Areskine participated in all aspects of the Scottish academic world as he progressed from student to professor. At a time when only 1.5–2 per cent or about 1,000 to 1,200 students of the eligible population of Scotland each year attended a domestic university, Aikenhead and Areskine represented a minority in society when they embarked on their higher educations.<sup>1</sup>

### Scottish Universities and the Arts Curriculum

As far as educational opportunities were concerned, late seventeenth-century Scotland was one of the best places in Europe for a boy of any social class to grow up. Scotland was one of the most educationally advanced nations in Europe and had experienced post-Reformation developments in educational policy and practice at every level from the parish schools to the universities. There were grammar schools in most towns in Scotland by 1500 and from 1560

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<sup>1</sup> Ian D. Whyte, *Scotland before the Industrial Revolution: An Economic and Social History, c.1050–c.1750* (London and New York: Longman, 1995), 248; R.D. Anderson, "Scottish Universities", in *Institutions of Scotland: Education*, ed. Heather Holmes, vol. 11 of *Scottish Life and Society: A Compendium of Scottish Ethnology*, ed. Alexander Fenton (East Linton: Tuckwell; European Ethnological Research Centre, 2000), 154–74 at 157. Student numbers rose throughout the eighteenth century from about 1,200 in 1700 to nearly 3,000 in 1800. *Ibid.* 159.

Protestant reformers worked to standardise the curriculum offered at them.<sup>2</sup> The *Book of Discipline* of 1560 was designed primarily as a means of propagating Calvinist faith but in practice its use encouraged more general learning. The reformers had secular support and government acts of 1616, 1633, 1646, and 1696 strengthened the parish school system.<sup>3</sup> The provisions of the last of these reinforced the requirement for each parish to run a school.<sup>4</sup> The result was that by about 1700, in richer areas of the country such as the Lothians, Fife, and Angus, at least 90 per cent of parishes had schools and teachers for them. Religious instruction was combined with classes in Latin grammar and literature. Vernacular instruction was also offered.<sup>5</sup>

The full details of Areskine's childhood education are unknown but he would certainly have known Latin before going to university. Since he entered St Andrews in the second class, Areskine may have had tutoring to get him to that level before leaving the family estate at Alva. An employment reference of 8 November 1700 states that Areskine had spent all of his time in the Presbytery of Stirling which included Alva, until he went to university. As was the usual practice in seventeenth-century Scotland, Areskine began his university education while in his early teens. He was at St Salvator's College, St Andrews as an undergraduate by 1694, paid for his BA degree in 1696, and obtained his Master of Arts degree on 12 June 1699.<sup>6</sup> As an undergraduate, Areskine studied under an appointed regent who dictated lectures and read out texts. The students then used the notes that they wrote during their lessons as textbooks.<sup>7</sup> Areskine took rather longer than was usual to obtain his MA and it seems that his interest in mathematics caused him to delay his graduation by going beyond the standard curriculum to include advanced mathematical studies.<sup>8</sup> Surviving theses dating from the 1680s and 1690s show that some of the St Andrews regents were aware of recent developments in scientific and mathematical

<sup>2</sup> Whyte, *Scotland before the Industrial Revolution*, 240.

<sup>3</sup> R.A. Houston, "Scottish Education and Literacy, 1600–1800: An International Perspective", in *Improvement and Enlightenment: Proceedings of the Scottish Historical Studies Seminar, University of Strathclyde, 1987–88*, ed. T.M. Devine (Edinburgh: John Donald, 1989), 43–61 at 44.

<sup>4</sup> Whyte, *Scotland before the Industrial Revolution*, 241.

<sup>5</sup> Houston, "Scottish Education", 44.

<sup>6</sup> Robert Ramsay and others, "Letter of Recommendation" (8 Nov. 1700), Edinburgh City Archives, McLeod's Coll., Bundle 11, Shelf 36.

<sup>7</sup> R.A. Houston, *Literacy in Early Modern Europe: Culture and Education, 1500–1800* (London: Longman, 1988), 82.

<sup>8</sup> John W. Cairns, "The Origins of the Edinburgh Law School: The Union of 1707 and the Regius Chair", *Edinburgh Law Review*, 11 (2007), 300–48 at 330.

thinking and that they were increasingly accepting and teaching the ideas of Isaac Newton.<sup>9</sup> By the time he began to apply for regenting positions, Areskine's referees were able to praise his advanced accomplishments in mathematics as well as his good deportment and behaviour.<sup>10</sup>

Christine Shepherd studied the arts curriculum of the Scottish universities in the seventeenth century in great detail and found that teaching staff at institutions throughout the country were often innovative and inspiring.<sup>11</sup> Since Areskine started as a student in this tradition and went on to teach in it, it is worth briefly examining the mechanics of a Scottish university education of his time. Political and religious controversies affected the universities throughout the seventeenth century but the curriculum they offered remained remarkably similar throughout the century. From 1639 to 1643, visitors from the Church of Scotland General Assembly toured the universities and recommended a standard course for them. Shepherd summarises the visitors' recommendations as having a strong emphasis on Aristotle supplemented by studies in Greek, logic, arithmetic, ethics, metaphysics, and geometry.<sup>12</sup>

Other institutions and groups also regularly made recommendations for changes to the system but in many ways the programme and teaching methods remained consistent. The system's primary goal was providing the basic practical skills needed for careers in the ministry, law, teaching or other professions.<sup>13</sup> To this end, all of the universities offered similar arts programmes based on the recommendations above, all used regenting for instruction, all of the teaching was done by dictation, and all of the exams had similar formats.<sup>14</sup> The universities regularly considered the elements of the curriculum and attempted to standardise it. From the evidence of the curriculum's structure, we can conclude that Areskine as a participant had a basic knowledge of Aristotle's philosophy and skill in logic and mathematics before he took his master's degree.

<sup>9</sup> John L. Russell, "Cosmological Teaching in the Scottish Universities", *Journal for the History of Astronomy*, 5 (1974), 122–32, 145–54 at 150.

<sup>10</sup> Ramsay and others, "Letter of Recommendation".

<sup>11</sup> See Christine Shepherd, "University Life in the Seventeenth Century", in *Four Centuries: Edinburgh University Life, 1583–1983*, ed. Gordon Donaldson (Edinburgh: EUP, 1983), 1–15; Christine Shepherd, "A National System of University Education in Seventeenth Century Scotland?", in *Scottish Universities: Distinctiveness and Diversity*, ed. Jennifer J. Carter and Donald J. Withrington (Edinburgh: John Donald, 1992), 26–33; Christine Mary King [later Shepherd], "Philosophy and Science in the Arts Curriculum of the Scottish Universities in the 17th Century", PhD. diss. (University of Edinburgh, 1974).

<sup>12</sup> Shepherd, "National System", 26.

<sup>13</sup> King, "Philosophy and Science", 313.

<sup>14</sup> Shepherd, "National System", 33.

Evidence from his 1731 manuscript does not confirm that Charles Areskine began to collect his books while he was a student but one of the books in the Alva Collection now in the National Library of Scotland may shed light on Areskine's undergraduate studies. NLS Alva.257 is Alexander Pitcairne's *Compendiaria et perfacilis physiologiae idea, Aristotelicae: forte conformior, physicae practicae ac chymicis experimentis accommodatior & aptior, quam quae vulgo in scholis obtinuit, & in amplis Jesuitarum monumentis conspicitur. Unacum anatome cartesianismi, in qua cartesii speculationes metaphysicae examini subjiciuntur* (London, 1676). Although Areskine's signature appears in it twice, the book is not listed in his catalogue of 1731. This treatise on Aristotle and Descartes would have been a useful addition to a Scottish undergraduate's library. That Pitcairne, who died in 1695, had been the provost of St Salvator's from 1691 and was later president of St Mary's College, secures a connection with St Andrews.<sup>15</sup> His book may have been recommended to students there. Whatever texts he used, by 1700 Areskine had "passed his course of philosophie" at St Andrews and had "afterward studied the mathematics for a considerable time". These academic assets, along with his "gravity, sobrietie, discretion and christian conduct" won the "verie great esteem" of the Rector, Principal, and the rest of the staff. Areskine made an unsuccessful application to teach at St Leonard's College at St Andrews and provided "pregnant proofs of the great advances he had then made in his studies...which were truly far beyond what could have been expected from one of his age".<sup>16</sup>

### Tutor at the Town's College: An Edinburgh Regent

The university at Edinburgh was founded as "Our Tounis College" by order of King James VI in 1582 and had the Town Council as its patron. The Council managed the appointments, finances, and educational policy of the university from the start and throughout most of the seventeenth century. Edinburgh's teaching structure was much like that of the other universities: a principal and four regents provided the standard arts curriculum. Regents took students through all aspects of the four year arts curriculum. The regents were mostly recent graduates themselves. As the end of the century approached the university gained some independence from the Town Council and began to make bold appointments such as that of James Gregory as

<sup>15</sup> A.S. Wayne Pearce, "Pitcairne, Alexander (d. 1695)", *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/22321>> accessed 2 Aug. 2009.

<sup>16</sup> Ramsay and others, "Letter of Recommendation".

Professor of Mathematics in 1674.<sup>17</sup> The renowned Gregory had been poached from St Andrews where he had held the Chair of Mathematics since 1668 as part of a move to increase Edinburgh's prestige and reputation for innovation.<sup>18</sup> The institution was referred to as a "university" in the minutes of the Town Council by 1685 and it came to be recognised as the most advanced of the Scottish universities by the end of the century.<sup>19</sup>

It may be that a career as a regent suited Areskine's talents but it also had appeal in that it did not require a long apprenticeship or a period of foreign study before he could establish himself in a profession.<sup>20</sup> Undeterred by his unsuccessful application for a regenting position at St Andrews in 1699, Areskine became a regent at Edinburgh soon after he obtained his MA.<sup>21</sup> It is possible that Areskine may have undertaken some informal postgraduate studies at Edinburgh and this may have encouraged his application for a position there. He certainly seems to have had some support within Edinburgh's academic community. In 1827, the Edinburgh bookseller John Stevenson offered for sale a copy of "The Petition of the Gentlemen Students in the University of Edinburgh, to the Town Council, in favour of Mr Charles Areskine, in the Competition between him and Mr Hogg for the Professorship of Philosophy" which he described as "CURIOUS" and priced at 2s 6d.<sup>22</sup> Areskine and four competing applicants all had political support. Areskine happened to have the backing of his cousin, John Erskine, earl of Mar, the most powerful patron in Scotland at the time. Influential patronage was helpful in a university setting but the candidates underwent a rigorous eight day trial to test their abilities.

<sup>17</sup> Alexander Law, *Education in Edinburgh in the Eighteenth Century* (London: University of London, 1965), 22.

<sup>18</sup> James Scotland, *The History of Scottish Education*, 1: *From the Beginning to 1872* (London: University of London, 1969), 146.

<sup>19</sup> Ibid. 159

<sup>20</sup> Cairns, "Origins", 330.

<sup>21</sup> Roger L. Emerson, *Academic Patronage in the Scottish Enlightenment: Glasgow, Edinburgh and St Andrews Universities* (Edinburgh: EUP, 2008), 386.

<sup>22</sup> I have not located a copy of this document. It was item 7185 in Stevenson's *Catalogue of a Collection of Tracts Illustrative of British History in Church and State: From the Accession of Charles the First to the Present Time* (Edinburgh: Printed for John Stevenson, 1827), 180. Stevenson's copy of this catalogue survives with his notes of sale in the Edinburgh Central Public Library. Dr Lee bought the item. This may have been the bibliophile John Lee (1779–1859) who was working in Edinburgh at the time of the sale. Fergus Macdonald, "Lee, John (1779–1859)", *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/16296>> accessed 5 Sept. 2011. Lee bought a copy of Areskine's *Theses philosophicae* (1704) from the same sale.

The candidates drew lots to select subjects for debate – Areskine's topic was “De Materiae Divisibilitate” – and they were given eight days to prepare an interpretation of a Pindaric ode to test their skills in Greek. After a public debate on the special subjects and on the odes, Areskine won the competition and became a regent of the University of Edinburgh on 26 February 1701.<sup>23</sup>

On 28 May 1701, Areskine took charge of his first group of students. By 1702, his original clutch of thirty had risen to forty-two and in 1704 Areskine presented sixty-four candidates for graduation.<sup>24</sup> At Edinburgh, the academic day started with lectures from 6 am in winter and 5 am in summer. Regents dictated their lessons and then led question and answer sessions before administering daily examinations. The educational routine also included public lectures given by the university's professors or the Principal each afternoon. Students attended Sunday church services for both morning and afternoon sessions and their regents examined them on the sermons. Formal exams took place at the start of each year to ensure that the student was ready to progress.<sup>25</sup> Regents had the power to issue fines for a range of bad behaviour including absence, swearing, profanity, and speaking English instead of Latin.<sup>26</sup> The system was much as it had been throughout the seventeenth century but its flaws were becoming increasingly apparent as the eighteenth century dawned.

A lack of experience as well as a lack of specialised knowledge among some regents meant that the system was unable to cope with the latest learning offered at some of the universities. Fortunate students might be assigned a progressive and well informed regent – such as Charles Areskine at Edinburgh – but the regenting tradition as teaching practice and the traditional arts curriculum were often inadequate. Even before Areskine joined their ranks, the Edinburgh regents had begun to go beyond the set curriculum to follow their own interests. By 1700, they preferred to teach empirical science and cited works by Robert Boyle, Isaac Newton, John Locke, and other modern thinkers in their dictates and theses. They began to phase out and replace the earlier

23 Andrew Dalzel, *History of the University of Edinburgh from its Foundation, 2: History* (Edinburgh: Edmonston and Douglas, 1862), 273–74.

24 EUL, Centre for Research Collections, MS Laing, Da.1.38, “Accompts of Mr Areskines Class Matriculate the 28 of May 1701”, f. 5; EUL, MS Laing, Da.1.38, “Supervements 23 Febr. 1702”, f. 5v; Charles Areskine, *Theses philosophicae, quas, auspice summo numine, generosi aliquot & ingenui juvenes universitatis Jacobi Regis Edinburgenae alumni, hac vice cum laurea emitendi, eruditorum examini subjicient, ad 12. diem Maii, H. Lq. S.* (Edinburgh: Andreae Symson, 1704), 3.

25 D.B. Horn, *A Short History of the University of Edinburgh, 1556–1889* (Edinburgh: EUP, 1967), 23–25.

26 Dalzel, *History of the University of Edinburgh*, 274–75.

ideas of René Descartes and countered the theories of Thomas Hobbes with those of Hugo Grotius, Samuel von Pufendorf, and Richard Cumberland.<sup>27</sup> By the early eighteenth century, Scottish undergraduates could expect to study natural philosophy, metaphysics, and mathematics.<sup>28</sup> The Edinburgh regents' innovative approaches caused problems, however, since the content of their courses still had to follow the Town Council's guidelines.

### Dangerous Books: The Death of Thomas Aikenhead

As a new regent at Edinburgh in the early eighteenth century, Areskine entered a dangerous world of educational and religious controversies. The tragic case of the Edinburgh student Thomas Aikenhead highlights some of the problems of the university regenting system as it existed in its final years. Areskine would have been well aware of Aikenhead and his execution when he took on his new employment. Baptised in 1676, Thomas Aikenhead was a near contemporary of Areskine who began his university studies at Edinburgh in 1693.<sup>29</sup> Aikenhead's academic progress was in no way unusual: he had been through most of the standard arts curriculum by 1696 and his regents had combined their own interests in Cartesian theory with the basic universities' curriculum.<sup>30</sup>

Aikenhead's problems began when he took to expressing freethinking opinions in public. He was not the first to do this in Edinburgh. Throughout the last two decades of the seventeenth century, leading Edinburgh intellectuals such as David Gregory, Professor of Mathematics, and the physician and Jacobite Archibald Pitcairne were well known throughout the town for their openly professed deism as well as their habit of socialising with academics and students in taverns. Their controversial opinions meant that Gregory and Pitcairne

<sup>27</sup> Emerson, "Science", 17–18.

<sup>28</sup> Roger Emerson, "What did Eighteenth-Century Scottish Students Read?", in *Essays on David Hume, Medical Men and the Scottish Enlightenment: "Industry, Knowledge and Humanity"* (Farnham: Ashgate, 2009), 49–76 at 64–66.

<sup>29</sup> Michael Hunter, "Aikenhead the Atheist: The Context and Consequences of Articulate Irreligion in the Late Seventeenth Century", in *Science and the Shape of Orthodoxy: Intellectual Change in Late Seventeenth-Century Britain* (Woodbridge: Boydell Press, 1995), 308–32 at 309–10. He did not graduate: his name does not appear in the list of graduates of the University of Edinburgh. *Catalogue of the Graduates in the Faculties of Arts, Divinities, and Law of the University of Edinburgh since its Foundation* (Edinburgh: Neill and Company, 1858).

<sup>30</sup> Hunter, "Aikenhead", 310, 327.

both left Scotland to take appointments elsewhere in the early 1690s. Gregory became the Savilian Professor of Mathematics at Oxford in 1691 with the recommendation of Isaac Newton. Pitcairne became a professor in the medical faculty at the University of Leiden from 1692 to 1693.<sup>31</sup> Like Gregory, Pitcairne was fortunate in his friends. Although they opposed his political and religious views, Gilbert Burnet, Bishop of Salisbury, and James Dalrymple, Viscount Stair, both former exiles to Leiden themselves, recommended Pitcairne to the university officials there.<sup>32</sup> Stair wrote to Leiden indicating that Pitcairne would “accept a ‘call’”: the Curators offered Pitcairne an appointment as Professor of the Practice of Physic.<sup>33</sup> Pitcairne later returned to Edinburgh where he became notorious as a “great mocker of religion”.<sup>34</sup> He even went so far as to publish satirical attacks on the presbyterian kirk.<sup>35</sup> Pitcairne spent time in Edinburgh’s Tolbooth Prison for his expressions of his concerns about the kirk’s power in post-Revolution Scotland.<sup>36</sup> Gregory and Pitcairne were protected by their positions in society and influential friends: the student Aikenhead was not so fortunate.

Aikenhead’s first regent at Edinburgh had been Alexander Cunningham.<sup>37</sup> Cunningham was an associate of David Gregory who had been cited in the university visitation of 1690 for unsound ideas and possible Roman Catholic sympathies. He may also have beaten his students and it is possible that he had a drinking problem. In his teaching he favoured Descartes and praised Boyle but he did not go so far as to embrace the Newtonianism of his friend Gregory. One of Aikenhead’s classmates, Thomas Halyburton, later described Cunningham as “being very skilful in teaching...the Latin Tongue”.<sup>38</sup> Ill health

<sup>31</sup> Michael F. Graham, *The Blasphemies of Thomas Aikenhead: Boundaries of Belief on the Eve of the Enlightenment* (Edinburgh: EUP, 2008), 26.

<sup>32</sup> Simon Schaffer, “The Glorious Revolution and Medicine in Britain and the Netherlands”, *Notes and Records of the Royal Society of London*, 43/2: *Science and Civilization under William and Mary* (1989), 167–90 at 173.

<sup>33</sup> R.W. Innes Smith, *English-Speaking Students of Medicine at the University of Leyden* (Edinburgh; London: Oliver and Boyd, 1932), 183.

<sup>34</sup> Robert Wodrow, quoted in Graham, *Blasphemies*, 26.

<sup>35</sup> Hunter, “Aikenhead”, 322. Pitcairne’s satirical works included *The Assembly, A Comedy, by a Scots Gentleman* (“London”, 1722) which attacked Presbyterians.

<sup>36</sup> Schaffer, “Glorious Revolution”, 172.

<sup>37</sup> A different Alexander Cunningham from the bookman and civilian whom we will meet below.

<sup>38</sup> Thomas Halyburton, *Memoirs of the Life of the Reverend Mr. Thomas Halyburton, Professor of Divinity in the University of St. Andrews* (Edinburgh: Printed by the heirs and successors of Andrew Anderson, 1714), 34. Halyburton left Edinburgh for health reasons and continued his education at St. Andrews. He regarded this as a lucky escape since “...the Class I

led Cunningham to hand his students over to a new regent, John Row, in 1695. Cunningham died in 1696 and so was not available for questioning during Aikenhead's trial.<sup>39</sup>

Thomas Aikenhead was accused of blasphemy on 10 November 1696.<sup>40</sup> The charges against him included "denying the Trinity, and the authority of the Scriptures, and...maintaining the eternity of the World".<sup>41</sup> Aikenhead's contact with "atheistical books" was credited with inspiring and encouraging his free-thinking throughout his trial. He would have had easy access to sceptical writings in the Edinburgh's University Library since works by authors such as Hobbes, Spinoza, and Descartes were all available there. From 1682 all of the library's holdings were available to undergraduates and from 1694 the library's decoration included a portrait of Descartes.<sup>42</sup> The library accepted the donation of a work by the Spanish heretic Servetus from Alexander Cunningham of Block who gave the rare book in memory of his private pupil Lord George Douglas in 1695.<sup>43</sup> The library regularly invested in new books including controversial ones and its purchases included Hobbes's complete works, Charles Blount's translation of Philostratus' *Life of Apollonius of Tyaneus*, *Letters Writ by a Turkish Spy*, Thomas Burnet's *Archaeologiae philosophicae* and *Sacred Theory of the Earth*, and John Toland's *Christianity Not Mysterious*.<sup>44</sup> It is clear that such sources inspired Aikenhead's thinking, and although his evidence does not survive, it is significant that the university librarian, Robert Henderson, was called as a witness at the Aikenhead trial. "Atheistical, erroneous or profane" books meanwhile were so widely available in Edinburgh's book shops that the Privy Council had considered searching for them so that they could be confiscated early in 1696.<sup>45</sup>

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left was broke quite, the Regent continuing indisposed that Year, and falling next Year into a Frenzy". Ibid.

39 Graham, *Blasphemies*, 89.

40 Ibid. 72.

41 Hugo Arnot, *A Collection and Abridgement of Celebrated Criminal Trials in Scotland, From A.D. 1536, to 1784. With Historical and Critical Remarks* (Edinburgh: William Smellie, 1785), 322.

42 Graham, *Blasphemies*, 90–91.

43 John W. Cairns, "Alexander Cunningham, Book Dealer: Scholarship, Patronage, and Politics", *Journal of the Edinburgh Bibliographical Society*, 5 (2010), 11–35 at 15.

44 Hunter, "Aikenhead", 328. Toland was briefly at the University of Edinburgh from 1689 to 1690. Ibid. 322–23. Material like this could also be circulated in manuscript form. See J.A.I. Champion, "Bibliography and Irreligion: Richard Smith's 'Observations on the Report of a Blasphemous Treatise', c. 1671", *Seventeenth Century*, 10/1 (1995), 77–99.

45 Hunter, "Aikenhead", 328, 322.

Aikenhead's most vehement accuser was his fellow student Mungo Craig who not only testified against him at the trial but published two pamphlets attacking his former friend. Craig, who had almost certainly supplied Aikenhead with some of the reading material that inspired his controversial opinions, wanted to distance himself from Aikenhead.<sup>46</sup> The first pamphlet to appear was *A Satyr against Atheistical Deism. With the Genuine Character of a Deist. To which is Prefixt, An Account of Mr. Aikinhead's [sic] Notions, Who is now in Prison for the Same Damnable Apostacy.*<sup>47</sup> This included a list of books Aikenhead was supposed to have wanted to publish to promote his freethinking opinions. Second on the list is Craig's criticism of the scientific thinking and mathematical theories of Descartes:

II. *Machina Dedalæa magna atque nova; or, A new Engine of the same use in Air that Ships are in the Water; whereby we may have easy Commerce with the other Vortices, and especially with the World in the Moon.*<sup>48</sup>

Craig's rant includes a list of the authors and books the deist Aikenhead admired. These included "his Apostle Hobb's", "Epicure's Denial of Providence", "Aristotel's Eternity of the world", "Blunt's Oracles of Nonsense", and "Mr Lock's Moral way of Demonstration".<sup>49</sup> Despite the satirical titles Craig created for their books, all of these authors would have been discussed by regents and students at the university as a part of the curriculum. Aikenhead answered Craig's accusations by saying that his accuser was the real atheist who had "constantly made it his work to interrogat me anent my reading of the said atheisticall principles and arguments" and further added that the books Craig had shown him "ought neither to be printed nor exposed to public view".<sup>50</sup> It is possible that both Craig and Aikenhead lacked, or ignored, any guidance from their teachers in determining how to go about reading and interpreting the

46 Ibid. 317.

47 After Aikenhead's death Craig published *A Lye is No Scandal. Or a Vindication of Mr. Mungo Craig, From a Ridiculous Calumny cast upon him by T.A. who was Executed for Apostacy At Edinburgh, the 8 of January, 1697* (Edinburgh, 1697) to reinforce his innocence from holding problematic doctrines.

48 Mungo Craig, *A Satyr Against Atheistical Deism With the Genuine Character of a Deist. To which is Prefixt, An Account of Mr. Aikinhead's [sic] Notions, Who is now in Prison for the Same Damnable Apostacy* (Edinburgh: Robert Hutchison, 1696), 3.

49 Ibid. 13–14. Locke's interest in the Aikenhead case caused him to collect materials related to the trial. His collection is the best in existence and survives in the Lovelace Collection of the Bodleian Library. See Hunter, "Aikenhead", 231.

50 Thomas Aikenhead, quoted in Graham, *Blasphemies*, 105.

texts they had access to as students. Their discussions about vortices and other worlds showed that the students were aware of modern natural philosophy but Aikenhead's proposal that Jesus Christ had merely used the laws of the natural world to ascend to the heavens was a step too far.<sup>51</sup>

Unlike Gregory and Pitcairne who had money, powerful friends, and the ability to flee the country when required, Aikenhead was an orphan with no resources or connections. His expression of blasphemy could not be tolerated and he was hanged on 8 January 1697.<sup>52</sup> Aikenhead's execution and its aftermath brought the discussion of dangerous ideas out into the open beyond the walls of the university's library but it is striking that none of Aikenhead's fellow Edinburgh freethinkers helped him during his trial.<sup>53</sup> It was one thing to express irreligious thoughts in taverns among friends or to collect and read questionable manuscripts and books but quite another to come to the aid of someone facing a criminal trial. But the intellectual world was changing fast. The trial later came to be seen as a lapse in judgement as debates about scepticism became a part of the discourse that was one of the strands of Scottish Enlightenment thought. As Hugo Arnot put it retrospectively in 1785: "Mercy was asleep, as well as Justice and Science; so the dreadful sentence was executed".<sup>54</sup>

### *Areskine as a Moderate: John Simpson v the General Assembly*

When John Simson, Professor of Divinity at Glasgow, was accused of heresy for a second time in 1729, Charles Areskine acted to manage affairs at his trial before the General Assembly.<sup>55</sup> Areskine, by now no longer a regent but an influential lawyer and a "moderate" and active member of the Church of Scotland, worked on behalf of the government and of his patron Archibald Campbell, then earl of Ilay, to support Simson against more orthodox members

<sup>51</sup> Hunter, "Aikenhead", 327.

<sup>52</sup> Graham, *Blasphemies*, 2.

<sup>53</sup> John Robertson, *The Case for the Enlightenment: Scotland and Naples, 1680–1760* (Cambridge: CUP, 2006), 99.

<sup>54</sup> Arnot, *Collection*, 327.

<sup>55</sup> Simson had previously been acquitted of wrongdoing in the 1710s. Anne Skoczyłas, *Mr Simson's Knotty Case: Divinity, Politics, and Due Process in Early Eighteenth-Century Scotland* (Montreal: McGill-Queen's University, 2001), 103–73, 313. I am grateful to John Cairns for drawing my attention to the Simson case. In the years Areskine was studying mathematics at St Andrews and Aikenhead was studying at Edinburgh, Simson served as "bibliothecary" at the University of Glasgow. He had graduated MA from Edinburgh in 1692 and he began his divinity studies at Glasgow in 1694. The "bibliothecary" looked after the books in the university library and held the office for a four-year term. *Ibid.* 33.

of the Kirk. Simson, among other possibly heretical charges, had argued that the doctrine of scripture was fully compatible with Newtonian physics. He also believed that individuals could make their own choices in religious matters and he taught his students a more tolerant form of divinity than his rivals liked.<sup>56</sup> His tolerant religious views alarmed orthodox members of the Kirk who feared that his openness would cause his students to become atheists.<sup>57</sup> Areskine helped engineer a compromise which allowed Simson to keep his living on the condition that he did not teach.<sup>58</sup> What is significant here is that, as Simson's biographer Anne Skoczyłas puts it, "despite the unrepealed anti-blASPHEmy laws, no one suggested that Simson should be charged as Aikenhead had been, or hanged if convicted".<sup>59</sup> It is also worth recalling Areskine's promotion of Newtonian ideas as a regent. Areskine's engagement with Newtonianism as a regent and his support of Simson show his sympathy for religious tolerance. The Edinburgh where Areskine started his working life in 1701 was a very different place from the one he finished in more than sixty years later.

Although the Aikenhead case emphasised problems with the regenting system and its potential for providing poor quality instruction for students, the arts curriculum offered at Scottish universities was usually flexible, comprehensive, and advanced from the mid-seventeenth century. Throughout Scotland, universities combined traditional scholastic learning with new ideas in mathematics and natural philosophy deriving Descartes and his followers which began to appear in the 1650s. By the 1670s Cartesian ideas were taught if not trusted and by the 1680s Newtonian science was taught and discussed.<sup>60</sup> This was especially the case at Edinburgh where Areskine and his fellow regents promoted the newest ideas in natural philosophy in their dictates and theses. The natural philosophy of Newton and his followers was fully adopted by Areskine and his fellow regents at Edinburgh. The regents regularly referred to the works of members of the Royal Society of London and were well informed about the scientific and mathematical developments of their time.<sup>61</sup> Areskine and his fellow regents had good reasons beyond the sciences for preferring the

56 Ibid. 14–16.

57 Ibid. 14, 22.

58 Ibid. 318–20.

59 Ibid. 352.

60 Christine M. Shepherd, "Newtonianism in Scottish Universities in the Seventeenth Century", in *The Origins and Nature of the Scottish Enlightenment*, ed. R.H. Campbell and Andrew S. Skinner (Edinburgh: John Donald, 1982), 66–67.

61 Eric G. Forbes, "Philosophy and Science Teaching in the Seventeenth Century", in *Four Centuries: Edinburgh University Life, 1583–1983*, ed. Gordon Donaldson (Edinburgh: EUP, 1983), 28–37 at 34–35.

ideas of Newton and his followers to those of Descartes. Newton's theory of how the universe worked required the presence of God.

### Learning and Faith: Credentius v Philologus

Some of the “atheisticall” authors mentioned in the Aikenhead trial, although not the particular books were present in the private library Areskine started recording in 1731. He owned four works written or edited by John Toland and one by Spinoza on Descartes, *Renati Des Cartes Principiorum philosophiae pars i, & ii, more geometrico demonstratae. Accesserunt ejusdem Cogitata metaphysica* (1663). The only reference found to Hobbes, however, is Edward Hyde's criticism, *A Brief View and Survey of the Dangerous and Pernicious Errors to Church and State, in Mr. Hobbes's Book, entitled Leviathan* of 1676.

The books read by students and members of the educated classes were clearly a cause of concern for some Christians and their anxieties led them to publish books that would help them protect their faith. The English theologian William Nicholls, for example, began publishing a series of dialogues in 1696 which were designed to help Christians defend themselves from “Philosophical Gentlemen” who

being Men of Parts and Letters, and able to manage an argument...set upon some unlearned Christian; they puzzle and confound him with Philosophick Terms and Experiments, and with a Set of Jests and Bantering Expressions against Scripture; and when thus they have beat the poor Man out of his Road, they think to have triumphed over Christianity.<sup>62</sup>

Nicholls's protagonist, the learned Christian Credentius, could respond to his friend Philologus the theist's arguments on this own terms while he attempted to change his erroneous opinions. Nicholls described the libraries his characters owned. These symbolic book collections show that late seventeenth-century scholars understood that the books found on library shelves defined a scholar's interests and beliefs. Credentius's wholesome study contains books that he is happy to lend to neighbouring clergy including

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<sup>62</sup> William Nicholls, *A Conference with a Theist Wherein I. Are Shown the Absurdities of the Pretended Eternity of the World, II. The Difficulties in the Mosaick Creation are Cleared, III. The Lapse of Mankind is Defended against the Objections of Archaeologie Philosophicæ, The Oracles of Reason, &c.* (London: Printed by T.W. for Francis Saunders...and Tho. Bennet, 1696), preface.

a very large and choice Collection of Books in most Arts and Sciences.... he had...not only...all History, both Ancient and Modern, and with a Collection of Classick and Law-Books; but was also furnished with all the Fathers and Councils of the Best Editions, with a variety of Bibles, Criticks and Commentators on the Scripture, and with a considerable number of the best Critical, Casuistical and Controversial Divines.<sup>63</sup>

Philologus's more suspect study, in contrast, is filled with works that would appeal to early modern humanist scholars. His

Books were Methodically arranged into various Classes, under the Images of Ancient Philosophers and Poets, and some other celebrated Modern Writers. Nor was there wanting any Greek, Philosophical, or Philological Writer from *Homer* to *Pletho*; and all the Latin Classicks stood in the exactest order and in the most curious binding...they were chiefly of the charming Editions of *Aldus*, the *Stephani*, and *Vascosanus*. Here were all the Learned *Adversaria*, Dissertations, &c. of the famous Philologers of this and the last Age...here was a Collection of every thing curious in the Philosophy of the Moderns...all the Wits of our own and the Neighbouring Nations, every thing useful and delicate in the Methematicks and Poetry, most singular sets of the Modern History, Maps and Travels; in short a well chose Collection of the most refined and pleasing Authors, which may tend to render the study of a Gentleman agreeable and to highten his Genius.<sup>64</sup>

Their friendship and the trust they have in each other allow Credentius and Philologus to tolerate each other's arguments respectfully. Their discussions reveal much about the anxieties Christians felt about the influence of new philosophical ideas in society. Credentius's learning prevents him from being confounded by his theistic friend and Nicholls's message is that Christians need to know what theist libraries contain so that they can argue for their faith successfully. The library Areskine assembled in the early eighteenth century contained elements of both of the collections of Nicholls's scholarly duo.

A book published in Edinburgh reinforced this position of developing knowledge to protect faith. Thomas Halyburton, who had been one of Aikenhead's classmates, published *Natural Religion Insufficient; and Revealed*

63 Ibid. 3.

64 William Nicholls, *A Conference with a Theist, Part II* (London: Printed by T.W. for Francis Saunders...and Thomas Bennet, 1699), 1–2.

*Necessary to Man's Happiness* in 1714 with the blessing of seven Church of Scotland minsters, four of whom were involved in education as administrators or professors. Halyburton directly attacked Aikenhead's ideas in the work. Halyburton's posthumously published *Memoirs* candidly reveal his own internal fight against atheism in the 1690s and he testifies that his personal religious crisis had occurred after he had "studied Philosophy three Years". His works had the stamp of approval of the religious and educational establishments since they demonstrated how scepticism could be overcome.<sup>65</sup>

It is important to note that the retrospective viewpoint expressed by Arnot, the mutually respectful intellectual debates of Nicholls's characters, and the presence of "athiestical" authors in Areskine's library all conceal the reality that religious intolerance remained active well into the enlightened era. Alexander Broadie has pointed out that the intolerance demonstrated by the Aikenhead trial continued well into the 1740s but the difference was that a known deist like the philosopher David Hume did not need to find employment abroad or to fear for his life. It is however significant that Hume did not publish his *Dialogues Concerning Natural Religion* during his lifetime nor did he obtain a university chair.<sup>66</sup> Even so, attitudes were changing. Parliament allowed freedom of worship and "withdrew the legal rights of the kirk sessions over non-presbyterians" in 1712 and "by 1741 it was acceptable in some circles to poke fun at the church".<sup>67</sup>

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65 "Epistle of Recommendation", in Thomas Halyburton, *Natural Religion Insufficient; and Reveal'd Necessary to Man's Happiness in his Present State; or, A Rational Enquiry into the Principles of Modern Deists* (Edinburgh: Printed by the heirs and successors of Andrew Anderson, 1714). The "Epistle" was signed by William Carstares (Principal of the University of Edinburgh), James Hadow (Principal of St Mary's, St. Andrews), William Hamilton (Professor of Divinity at the University of Edinburgh), Will. Wisheart (Carstares's successor at Edinburgh), Thomas Black, James Grierson, and John Fleming. Areskine, despite knowing several of the signers of the "Epistle" including Carstares and Grierson, does not list a copy of Halyburton's book in his 1731 manuscript. Halyburton, *Natural Religion*, 119–20, 131; Thomas Halyburton, *Memoirs of the Life of the Reverend Mr. Thomas Halyburton, Professor of Divinity in the University of St. Andrews* (Edinburgh: Printed by the Heirs and Successors of Andrew Anderson, 1714), 51–56.

66 Alexander Broadie, *The Scottish Enlightenment: The Historical Age of the Historical Nation* (Edinburgh: Birlinn, 2001), 35–37. Arthur Herman's popular history, *The Scottish Enlightenment: The Scots' Invention of the Modern World* (London: Fourth Estate, 2001) also uses the Aikenhead trial to demonstrate the progressive change in Scottish attitudes between c. 1700 and the 1740s. See 1–11.

67 R.A. Houston, *Social Change in the Age of Enlightenment: Edinburgh, 1600–1760* (Oxford: Clarendon, 1994), 194, 210.

### Areskine's *Theses Philosophicae* of 1704

Given the trial and execution of Thomas Aikenhead, it comes as no surprise that Areskine was carefully vetted and tested before his appointment as a regent at the University of Edinburgh. There is no evidence that Areskine expressed sceptical thoughts during his tenure and he seems to have been a model regent who carefully explained the contexts of his lessons and provided appropriate warnings about potentially controversial material.

Two notebooks kept by Areskine's students survive in Edinburgh. The NLS holds a manuscript of dictates taken down by Patrick Wilkie in 1703.<sup>68</sup> Wilkie's neatly written notes in Latin give details of lectures in ethics, pneumatics, physics, and philosophy and include a manuscript copy of the *Theses philosophicae* written by Areskine that he would be called upon to defend at his graduation in 1704. Wilkie's notes show that Areskine did not shy away from controversial authors. The dictates include mentions of Democritus, Epicurus, Hobbes, Spinoza, Socrates, Pythagoras, Plato, Aristotle, and Henry More.<sup>69</sup> The University of Edinburgh holds a manuscript, also of 1703, of another of Areskine's students, Nicholas Montgomery, which gives details of lectures on mathematics and physics and includes mathematical equations and diagrams. Montgomery began keeping his notes on these lectures on 8 December 1703.<sup>70</sup> These dictates and theses not only reflect Areskine's own development and that of his students they also show the state of learning in the Scottish universities in the very early eighteenth century.

A more direct source of information about the subjects Areskine taught is found in a set of theses he wrote for his first group students to defend at their graduation. Areskine applied to the Town Council on 3 May 1704 to request permission for his magistrand class to graduate on 12 May 1704.<sup>71</sup> He then arranged for the publication of the *Theses philosophicae*. As indicated in Wilkie's lecture notes, Areskine had already given his students the theses as part of his dictates and he completed his regenting duties by coaching them for their graduation ceremony. Areskine's *Theses philosophicae* included discussions of Newtonian theories and mathematics. Perhaps it was Newton's insistence that God was necessary for his systems to work which made him

<sup>68</sup> Patrick Wilkie, "Lecture Notes, 1703", NLS MS Adv.20.7.1.

<sup>69</sup> Ibid., f. 23.

<sup>70</sup> Nicolas Montgomery, "Annotations ad Johannis Clerici Physicam. Ditatae a. Magistro Carolo Areskino in Academia Edinburgensi" (1703), EUL MS Dc.7.98.

<sup>71</sup> *Extracts from the Records of the Burgh of Edinburgh, 1701 to 1718*, ed. Helen Armet (Edinburgh: Oliver and Boyd, 1967), 74.

popular among the Edinburgh regents. Not only were his thinking and philosophy advanced and inspirational, Newton's theories were free of the accusations of atheism which Descartes' had attracted. Areskine made this abundantly clear in his first corollary to his theses, saying:

From the mutual attraction already described, upon which depend both celestial and terrestrial phenomena, it follows of necessity that there exists an omnipotent Being who is the supreme governor of all things, and that gravitation is an effect of his power, since the force and efficacy of attraction far exceeds the power of matter.<sup>72</sup>

Areskine does not explicitly cite specific works in the *Theses philosophicae* directly but it is possible to trace the sources he used. Areskine referred to publications by Newton as well as those by his associate David Gregory and other members of the Royal Society of London. In the *Theses*, Areskine praised Newton while rejecting the theories of Descartes and Leibniz about the structure of the universe. In Thesis XIII, for example, he declares that "Vorticism is...a weak hypothesis" and uses the motion of comets as an illustration of Newton's laws of gravity.<sup>73</sup> Comets were the subject of scientific, theological, and philosophical debates throughout the early modern period. Aristotelian theory held that comets were created in the earth's atmosphere and this led to an ancient and medieval belief that they were signs of disaster because the conditions which created them also caused drought, famine, hot weather, and pestilence. By the end of the seventeenth century, comets were understood to be celestial objects that had no influence on the future.<sup>74</sup> Descartes' vortex theory relied on matter being fixed in its motion: God had set the universe up like a giant clock-work mechanism in which his intervention was not required. Rejecting vorticism meant rejecting Descartes and therefore the deistic and atheistic implications of his theory. Astronomy and mathematics are closely linked throughout Areskine's *Theses*. Areskine additionally cited recent scholarship by Continental scholars such as Christiaan Huygens, whom he rated as the best explainer of Cartesian theory, and the Swiss mathematician Jacob Bernoulli.<sup>75</sup>

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<sup>72</sup> Charles Areskine, trans. and quoted in Russell, "Cosmological Teaching", 130.

<sup>73</sup> Areskine, *Theses*, 6–7 (my translation).

<sup>74</sup> Andrew Fix, "Comets in the Early Dutch Enlightenment", in *The Early Enlightenment in the Dutch Republic, 1650–1750: Selected Papers of a Conference held at the Herzog August Biblioteck, Woffenbuttel 22–23 March 2001*, ed. Wiep van Bunge (Leiden: Brill, 2003), 157–72

<sup>75</sup> Areskine, *Theses*, 5, 10.

Areskine's 1731 library catalogue, started nearly three decades after he wrote them, does not contain very much which matches the sources used in his *Theses*. There is a copy of "Newtown's Opticks" of 1704, but all of the other titles by Newton in the manuscript post-date the *Theses*. "Newton's Principiae" or *Philosophiae naturalis principia mathematica*, for example, is listed in the third edition of 1726. This does not exclude the possibility that Areskine possessed or borrowed the first edition of 1687 at some point. He may have replaced the first edition when the third was published just a few years before he started his catalogue. It is impossible to know without the physical evidence of a signature or a bookplate. The only work by Leibniz in the 1731 catalogue is a collection of philosophical essays of 1714. For Descartes, however, there is one work which may have informed the *Theses*. "Discoûrs sur la Dioptrique, Les Meteores et la Geometrie" was published in Leiden in 1637. This is Descartes' *Discours de la methode: pour bien conduire sa raison, & chercher la verité dans les sciences; Plus, La dioptrique; Les meteores; et, La geometrie*. This was a well-known set of publications in scientific circles and one which had been discussed by Newton.<sup>76</sup> It was a work known to generations of Scottish students. Descartes' works were well-known as a part of a Scottish education well into the twentieth century when John Buchan had his seventeenth-century student narrator John Burnet of Barnes say

I fell in one day with an English book, a translation of a work by a Frenchmen, one Renatus Descartes, published in London in the year 1649. It gave an account of the progress in philosophy of this man.... I gave my allegiance without hesitation to this philosopher, and ever since I have held to his system.<sup>77</sup>

The book referred to is *A Discourse of a Method for the Well-guiding of Reason, and the Discovery of Truth in the Sciences. Being a Translation out of that Famous Philosopher Renaldus Des Cartes* (London, 1649). These works of Descartes, whether he owned them at the time or borrowed them, would have certainly been useful to Areskine as a source for his *Theses*.

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<sup>76</sup> A. Rupert Hall, *Isaac Newton: Adventurer in Thought* (Cambridge: CUP, 1992), 49. Newton's optical studies with prisms which were published in 1672 were inspired by *La Dioptrique*. *Les Météores* presented the theory that matter caused light to spin thereby causing us to see colours. *Ibid.* 102.

<sup>77</sup> John Buchan, *John Burnet of Barnes* (Edinburgh: Polygon, 2008), 31. Although first published in 1897, Buchan's fictitious account of a Scottish student's education in the late seventeenth century summarises the attitude of many of Areskine's contemporaries.

With the exception of Newton's *Principia*, Areskine does not mention his sources by title. Some of the theses, however, offer some clues as to where Areskine found his arguments. In Thesis xix, for example, he references "Gregorius Gentis & Academiæ nostræ decus" as the best source to consult for astronomical knowledge.<sup>78</sup> In 1702 David Gregory had published *Astronomiae physicae et geometricae elementa* which featured original work by Newton. This went on to become a standard textbook for the rest of the century but at the time of Areskine's *Theses* it was newly published.<sup>79</sup> In Thesis xx (mistakenly labelled as xxı), Areskine may have been turning to the *Philosophical Transactions of the Royal Society of London* for a discussion of Jacob Bernoulli's geometry and its relation to Newton's *Optics*. Volume 24 of the *Philosophical Transactions* had as its second article, "Solutio Problematis. A Clariss. Viro D. Jo. Bernoulli in Diario Gallica Febr. 1403 Propositi Quam D.G. Cheyæo communicant Jno. Craig".<sup>80</sup> Areskine's 1731 catalogue contains no works by Cheyne or Craig. Areskine did not list the *Philosophical Transactions* as being in his collection in 1731 but he certainly would have had access to the publication in the University of Edinburgh's library. Bernoulli's work on comets, *Conamen novi systematis cometarum, pro motu eorum sub calculum revocando & apparitionibus praedicendis* however, is also present in the 1731 list so he could have worked directly from the text if he owned it as early as 1704.

In all of the sources he cited in his dictates and in his *Theses philosophicae*, Areskine referred to materials which were untainted by the recent controversies about sceptical learning and texts. His strongly pro-Newtonian approach explicitly acknowledged the necessity of God as essential for making the universe work.<sup>81</sup> When he cited the work of the controversial Jean Le Clerc in his dictates, Areskine was careful to point out to his students that not all of the ideas in that author's *Physics* were sound. Le Clerc's work had been censured by the Commissioners of the universities in the 1690s for its scepticism. Areskine made it clear that he wanted only to study Le Clerc's ideas about gravitation, which were similar to Newton's, and not to engage with his theology.<sup>82</sup>

The library at Edinburgh University actively developed its collection and the regents were keen users of the materials the library stocked. In 1690, the

<sup>78</sup> Areskine, *Theses*, 10.

<sup>79</sup> Anita Guerrini, "Gregory, David (1659–1708)", *ODNB* (Oxford: OUP, Sept. 2004; online edn, Jan. 2008) <<http://www.oxforddnb.com/view/article/11456>> accessed 2 Aug. 2009.

<sup>80</sup> "1403" is a misprint for "1703".

<sup>81</sup> King, "Philosophy", 234.

<sup>82</sup> Ibid. 57, 222–23.

university's library was the first in Scotland to purchase Newton's *Principia*. This was five years before any other university library in Scotland.<sup>83</sup> All of the Edinburgh regents cited works by members of the Royal Society of London. They approved of the Society's encouragement of experimental science and regularly referred to the work of its members in their dictates and theses.<sup>84</sup> Memories of the Aikenhead crisis, however, meant the Town Council remained wary about some of the material available in the university library. On 20 May 1703, for example, the Committee on College Affairs reported that it

...did find that ther was ane press in the upper hall of Atheisticall booke or bookes attending thereto which Doctor Rule late primer caused sequestre.... It is the Committees opinion that the key and press be committed to the custodie of Mr Henderson and he be injoyned to have a speciall care that none of these bookes without order from the Councill should be given out. The Council appoint ballie Linn to get from the professor of theologie ane catalogue of the above Athiesticall bookes to the effect that the magistrates may inquire after them.<sup>85</sup>

Areskine, however, may not have been completely reliant on having access to the resources of the university. His older brother Robert was a physician and a friend of prominent members of Newton's circle, including Gregory and Pitcairne. He shared a medical background with the latter. Robert was in London from 1702 to 1704 and was elected as a Fellow of the Royal Society of London on 30 November 1703.<sup>86</sup> Areskine, therefore, had more than one point of access for the latest research. Robert was the closest of Areskine's brothers both in age and in interests. He had a large book collection and was noted for his scholarship. He gave Areskine a link to the scientific community of the Royal Society.

Areskine's teaching was part of a wider tradition of Newtonian acceptance in the Scottish universities. Although his career as a regent lasted less than a

<sup>83</sup> Christine Shepherd, "The Inter-relationship between the Library and Teaching in the Seventeenth and Eighteenth Centuries", in *Edinburgh University Library, 1580–1980: A Collection of Historical Essays*, ed. Jean R. Guild and Alexander Law (Edinburgh: Edinburgh University Library, 1982), 67–86 at 74.

<sup>84</sup> Ibid.

<sup>85</sup> *Extracts*, 49.

<sup>86</sup> The Royal Society Library and Information Services, "List of Fellows of the Royal Society of London, 1660–2007: A Complete Listing of all Fellows and Foreign Members since the Foundation of the Society" (2007), 13, available at <<http://royalsociety.org/WorkArea/DownloadAsset.aspx?id=4869>> accessed 18 July 2010.

decade, Areskine retained his interest in the subjects he taught throughout his life. Books about these topics, including works by the Newtonian Colin MacLaurin on fluxions of 1742 and his *An Account of Sir Isaac Newton's Philosophical Discoveries* (1748) are listed in Areskine's 1731 manuscript.<sup>87</sup> It is not surprising to find Areskine among the founder members of the Philosophical Society of Edinburgh in 1737.<sup>88</sup> Nor is it a surprise that this organisation made it clear from the start that its members would not discuss matters of politics or religion.<sup>89</sup> MacLaurin's *Account*, however, explicitly linked "God's providence with Newtonian physics" and this approach "was appreciated by Moderates in the Church of Scotland, and helped reinforce the alliance between sciences, religion and the Scottish universities".<sup>90</sup>

### The Regius Chair of the Law of Nature and Nations at the University of Edinburgh

Areskine's tenure as a regent at Edinburgh was one of the last in a long tradition of regenting at the Scottish universities. The Principal of the University of Edinburgh, William Carstares, recognised that there were problems with the method. He looked to the Dutch professorial system which featured specialised teachers for each subject as a model for reform. Carstares had had the benefit of a continental education having matriculated at Utrecht in 1669.<sup>91</sup> Carstares favoured removing the regents and replacing them with the best professors available for each area of study. The university's patron, the Town Council of Edinburgh, was also dissatisfied by the state of the institution. In 1704, it heard complaints that teachers and students were ignoring the daily timetable, speaking in English instead of Latin, and damaging the university's

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<sup>87</sup> Areskine subscribed for MacLaurin's *Account* in its large paper version. He is listed among the subscribers as "The Hon. Charles Areskine, of Tinwald, one of the Lords of Session". See also P.L. Wallis, "The MacLaurin 'Circle': The Evidence of Subscription Lists", *Bibliotheca*, 11/2 (1982), 38–54.

<sup>88</sup> Roger L. Emerson, "The Philosophical Society of Edinburgh, 1737–1747", *British Journal for the History of Science*, 12 (1979), 154–91 at 190; Cairns, "Origins", 344.

<sup>89</sup> *Ibid.* 164.

<sup>90</sup> Judith V. Grabiner, "MacLaurin and Newton: The Newtonian Style and the Authority of Mathematics", in *Science and Medicine in the Scottish Enlightenment*, ed. Charles W.J. Withers and Paul Wood (East Linton: Tuckwell, 2002), 143–71 at 147.

<sup>91</sup> Esther Mijers, "News from the Republick of Letters": Scottish Students, *Charles Mackie and the United Provinces, 1650–1750* (Leiden: Brill, 2012), 91.

buildings with their “rackets and handballs”.<sup>92</sup> Not only that but “a great many bookes are lent out and kept out of the Liberarie contrar to the Lawes of the Liberarie”.<sup>93</sup>

An anonymous critic, possibly Andrew Fletcher of Saltoun, highlighted some of the problems with the Scottish educational system in 1704. *Proposals for the Reformation of Schools & Universities, in Order to the Better Education of Youth* identified many flaws in the system which included too much access to education for the poor, the lack of instruction in Greek, and poorly qualified teachers for natural philosophy and mathematics.<sup>94</sup> The biggest problem, however, was that “our Youth are oblig'd to travel abroad, to study Physick and Law, and carry so much Money out of the Kingdom”.<sup>95</sup> To prevent this, Fletcher suggested that Parliament should “establish Professors of Law and Physick at Home, where our Youth might Learn more than a Year, then they can do abroad in three”. Sending young students abroad when “their Passions are strong and they have little sense to govern them” was counterproductive since “they acquire neither Virtue nor Learning, but Habits of all sort of Debauchery”. The extant system did not allow future leaders of the nation to acquire the knowledge they needed to take up professional roles. Fletcher suggested that “the Professions of Law and Physick [be] established in the University of Edinburgh”. Edinburgh was the only possible location for these new areas of expertise since it was

where the Students of Law may have the Advantage of excellent Librarys for the Civil Law, and opportunity to hear the Pleadings and Learn the Form of the House, which our Young Men, who study abroad, for all the Money they have spent, are altogether ignorant of. And the Physicians can have no Subjects nor Rooms for Anatomy, nor Laboratories for Chymie, nor Gardens for Botany, but at *Edinburgh*.<sup>96</sup>

<sup>92</sup> Scotland, *History of Scottish Education*, 159; Dalzel, *History of the University of Edinburgh*, 286–88.

<sup>93</sup> “Memoir to the Town Council, 16 June 1704”, quoted in Jonquil Bevan, “Seventeenth-Century Students and Their Books”, in *Four Centuries: Edinburgh University Life, 1583–1983*, ed. Gordon Donaldson (Edinburgh: EUP, 1983), 16–27 at 17.

<sup>94</sup> Andrew Fletcher, attrib., *Proposals for the Reformation of Schools & Universities, in Order to the Better Education of Youth. Humbly Offer'd to the Serious Consideration of the High Court of Parliament* (1704), 3–4.

<sup>95</sup> Ibid. 9.

<sup>96</sup> Ibid. 10.

By 1708 Carstares' plan for professionalising the university, which addressed many of these concerns, was in place.<sup>97</sup> Regents made way for a new wave of scholars as new chairs were founded at the university. One of the gaps in educational provision in Scotland had always been in legal education. Law teaching had never been established in the universities of Scotland.<sup>98</sup> As the *Proposals* described, students who wished to become advocates relied on travelling abroad to attain their legal training.<sup>99</sup> One of the first new chairs to be established as part of the university's reform programme was the Regius Chair in the Law of Nature and Nations in 1707. The first holder of this chair was the promoted former regent Charles Areskine who again had support from his cousin, the earl of Mar. The creation of the chair was controversial since financing it depended on reallocating funds earmarked for the Divinity School.<sup>100</sup>

Since the regents were looking for chances to concentrate on their own interests in the new academic structure, this suggests that Areskine had already expressed an interest in teaching the new subject. That Areskine had not formally studied law was not a problem: he may however have undertaken some informal study in the subject at some point.<sup>101</sup> In a letter of 1 February 1707, his cousin and patron Mar described Areskine as "a Regent in the Colledge just now but [who] has made the Publick Law his Study and is a very pretty Young Man".<sup>102</sup> For Mar, at least, Areskine's qualifications were not in doubt. Areskine was by then an experienced teacher but he probably lacked the level of specialised legal knowledge he needed to teach the new subject. Natural law, however, would not have been unknown to him: it was included as a part of the general arts curriculum. It was covered as part of the ethics curriculum under the

<sup>97</sup> Another reform was a restriction on book borrowing from the university library which was limited to masters of the college and to students who had the permission of masters. Bevan, "Seventeenth-Century Students", 17.

<sup>98</sup> Scotland, *History of Scottish Education*, 141.

<sup>99</sup> This does not mean that legal training did not exist in early modern Scotland. Members of the Society of Writers to His Majesty's Signet in Edinburgh, the Faculty of Procurators in Glasgow, and the Society of Advocates in Aberdeen gained their training via apprenticeships. From 1699, some Edinburgh advocates taught private classes modelled on the Dutch university system. John W. Cairns, "Lawyers, Law Professors, and Localities: The Universities of Aberdeen, 1680–1750", *Northern Ireland Legal Quarterly*, 46 (1995), 304–31 at 305, 315.

<sup>100</sup> For the fullest exploration of the controversy see Cairns, "Origins", *passim*. This was written on the tercentenary celebration of the foundation of the Edinburgh Law School and is the best account of the political implications of Areskine's appointment.

<sup>101</sup> Cairns, "Origins", 332.

<sup>102</sup> NAS, GD124/15/487/3, John Erskine, "Letter" (1 Feb. 1707).

regenting system and regents cited the writings of Grotius, Pufendorf, and Cumberland and by the late seventeenth century, discussions of natural law regularly appeared in regents' theses.<sup>103</sup> Areskine particularly discussed natural law theories in his lectures of 1703. His ideas about natural law echo the tenets set down by *The Larger Catechism* and Shepherd describes his approach as "setting out...the basic rules to be observed in our relations with God, ourselves and others".<sup>104</sup> The ethics teaching of the Scottish arts curriculum and the new professorship in natural law were closely linked.

Areskine took up the Regius Chair of the Law of Nature and Nations on 13 November 1707.<sup>105</sup> His first act, and one which confirms his interest in books, was to make a donation to the University Library which had served him so well during his regenting career. As John Cairns has noted, Areskine's donation of a copy of Aelian's *Varia historia* with Jacobus Perizonius' notes (Leiden, 1701) is still in the library at shelfmark \*W.23.1-2 and includes an inscription recording the gift in each volume.<sup>106</sup> This was a popular acquisition among those who studied abroad at Leiden. One of them donated a copy which had been signed by Perizonius to the Advocates Library.<sup>107</sup> Areskine also promised to donate a copy of Polybius with Casaubon's notes (Amsterdam, 1670).<sup>108</sup> Both of these donations are of historical rather than legal works.<sup>109</sup> Areskine delivered an inaugural address, or at least a weekly praelection, on the theme of "God as the fountain of Law" when he took on his new role.<sup>110</sup> Whatever the state of his knowledge or his perception of it, Areskine requested leave to go to the Netherlands to study natural law and the law of nations. By royal assent,

<sup>103</sup> King, "Philosophy", 168, 177.

<sup>104</sup> Ibid. 173.

<sup>105</sup> Emerson, *Academic*, 260.

<sup>106</sup> Cairns, "Origins", 333. *Kl. Aelianou sophistou Poikileistoria = Cl. Aeliani sophistae Varia historia: ad MStos codices nunc primum recognita et castigate*. In the first volume the inscription is partially obscured by subsequent tight binding. The ink inscription recording the gift is more clearly visible in the second volume and reads "Bibliotheca dono dedit D. Carolus Areskine 13 Nov<sup>bris</sup>, 1707".

<sup>107</sup> NLS pressmark K.24.d. Brian Hillyard, "The Formation of the Library, 1682–1728", in *For the Encouragement of Learning: Scotland's National Library, 1689–1989*, ed. Patrick Cadell and Ann Matheson (Edinburgh: HMSO, 1989), 23–66 at 38.

<sup>108</sup> Cairns, "Origins", 333. An undated pencil inscription in the first volume of W.20.18-20 in the Edinburgh University Library notes that the volumes were "Probably presented by Professor Charles Areskine".

<sup>109</sup> For Claudius Aelianus and Polybius, see *The Oxford Classical Dictionary*, ed. Simon Hornblower and Antony Spawforth, 2nd rev. edn (Oxford: Clarendon, 2003), 18, 1209–11.

<sup>110</sup> Cairns, "Origins", 343; Alexander Grant, *The Story of the University of Edinburgh during the First Three Hundred Years*, 2 (London: Longman, Green, 1884), 313.

Areskine was granted two to three years to study abroad before taking up his post.<sup>111</sup>

Areskine's decision to follow in the footsteps of generations of Scottish scholars and travellers gave him the opportunity to establish himself as a member of the learned communities he would find on the Continent. When he returned to Scotland three years later, it was as a legal virtuoso who had experienced the arts, sciences, and intellectual culture that were flourishing abroad. He brought back the beginnings of his private library and the knowledge he would need to participate in the Scottish Enlightenment.

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<sup>111</sup> Cairns, "Origins", 334; EUL, Dc.6.108.

## Scottish Legal Scholars Abroad

### Scottish Students Abroad

The *peregrinatio academica* was a long established tradition in Western Europe by the early eighteenth century. As soon as universities existed, students began to seek them out to find the best teachers and the best resources. The students' destinations depended on the subjects they sought and the political climate at any given time. Students from the British Isles seeking medical or legal training might be excluded from taking degrees at Continental universities or the two English universities on religious grounds during and after the Reformation. However, students could matriculate at most Continental universities regardless of their religious affiliations. War could disrupt academic travel but even the restrictions caused by the War of Spanish Succession from 1703 to 1712 did not prevent eager students from crossing the Channel.<sup>1</sup> Students could take courses without sitting exams or putting themselves forward for degrees. Most travelling Scottish students were graduates who went abroad to qualify for the professions. Foreign professors were often happy to offer informal courses for visiting students for a fee. Opportunities for studying theology, medicine, and law on the continent drew Scottish students to Italy, France, and Low Countries throughout the early modern period.<sup>2</sup>

As well as helping them to qualify for the professions, travel also fostered the students' sense of belonging to an international community of scholars. Travelling was an effective way to lessen prejudices while increasing networking opportunities with like-minded people who shared interests beyond the academic training which the students had as their priority. The Republic of Letters was continuously refreshed with young scholars.<sup>3</sup> For Scots legal scholars there was another dimension to this sense of community. Because so many future Scottish advocates travelled abroad and shared an experience of a "polite,

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<sup>1</sup> John W. Cairns, "Alexander Cunningham, Book Dealer: Scholarship, Patronage, and Politics", *Journal of the Edinburgh Bibliographical Society*, 15 (2010), 11–35 at 16.

<sup>2</sup> Eric G. Forbes, "Philosophy and Science Teaching in the Seventeenth Century", *Four Centuries: Edinburgh University Life, 1583–1983*, ed. Gordon Donaldson (Edinburgh: EUP, 1983), 28–37 at 28.

<sup>3</sup> Thomas J. Schlereth, *The Cosmopolitan Ideal in Enlightenment Thought: Its Form and Function in the Ideas of Franklin, Hume, and Voltaire, 1694–1790* (Notre Dame: University of Notre Dame, 1977), 2–5.

gentlemanly, scholarly" education when they returned it was as legal *virtuosi*.<sup>4</sup> Obtaining a foreign education was expensive however with the cost of study alone estimated at £100–£120 per year at the turn of the eighteenth century.<sup>5</sup>

The study of law had never been firmly established in Scotland as a university discipline. Canon law was dropped from the universities after the Reformation. New university charters at Glasgow and Aberdeen failed to include provision for legal training in the late sixteenth century. Although the chair in civil law at King's College, Aberdeen was continuously filled from its foundation in 1619, there was little demand from students who planned on admission to the Faculty of Advocates in Edinburgh.<sup>6</sup> Areskine's appointment as the first holder of the Regius Chair in the Law of Nature and Nations in 1707 marked the beginning of a new era in legal education in Scotland.<sup>7</sup> Areskine, who would have been well aware of the academic opportunities available abroad, thought it was necessary to travel to obtain the specialised knowledge he needed to fulfil his obligations as a professor.

Scottish law students went abroad in large numbers throughout the early modern period. French universities, with their humanist traditions, were an early target for legal scholars but by the late seventeenth century the Netherlands, with its tolerant attitude to religion and the excellent reputations of its professors, emerged as the destination of choice for future advocates. Scottish political exiles had spent time in the Netherlands throughout the 1680s and this helped strengthen trade links and eased financial transactions between the nations. The accession of William of Orange, the Dutch Stadholder, to the English and Scottish crowns in 1689 further increased connections between the Low Countries and the British Isles. William's French wars of the 1690s limited access to French universities for Scottish students.<sup>8</sup> It will never be known for certain how many Scottish students travelled to the Low Countries for educational purposes: the matriculation records for the university at Utrecht are incomplete.<sup>9</sup> The popularity of Dutch universities continued

<sup>4</sup> John W. Cairns, "Importing our Lawyers from Holland": Netherlands Influence on Scots Law and Lawyers in the Eighteenth Century", in *Scotland and the Low Countries*, ed. Grant G. Simpson (Edinburgh: Tuckwell Press, 1996), 136–53 at 138.

<sup>5</sup> John Finlay, *The Community of the College of Justice: Edinburgh and the Court of Session, 1687–1808* (Edinburgh: EUP, 2012), 125.

<sup>6</sup> John W. Cairns, "Lawyers, Law Professors, and Localities: The Universities of Aberdeen, 1680–1750", *Northern Ireland Legal Quarterly*, 46 (1995), 304–31 at 306–12, 330–31.

<sup>7</sup> James Scotland, *The History of Scottish Education, 1: From the Beginning to 1872* (London: University of London, 1969), 141.

<sup>8</sup> Cairns, "Importing", 144.

<sup>9</sup> Ibid. 139.

into the eighteenth century and the numbers of Scottish students attending them were at their highest between 1681 and 1730.<sup>10</sup> Although matriculation was not required in order to study, 1,027 Scottish students did matriculate formally at Leiden, Franeker, Groningen, and Utrecht during these years and these Dutch universities can be seen as in effect “a sixth Scottish university”: between 1701 and 1725 Scots made up nearly 13 per cent of the foreign student body at Leiden and 60 per cent of them studied law.<sup>11</sup>

Leiden, which Areskine chose for his legal education, was a popular choice for travelling Scottish scholars. Founded not long before the University of Edinburgh, the university at Leiden was the town's reward from William the Silent for withstanding siege by the Spanish in 1574. Offered a decade without taxation or a university, the long-sighted citizens chose the latter. Although it was a protestant foundation, the University of Leiden did not discriminate based on religion and soon had an international student body.<sup>12</sup> Throughout the seventeenth century foreign students arrived in Leiden in their thousands. Of these 714 have been identified as Scots and, of these Scots, 358 spent their time in the law faculty.<sup>13</sup> Low Countries universities were popular with early modern Scottish law students because the Scottish and Dutch academic traditions shared several elements. Both were designed to provide practical professional education and both were strongly protestant in their approaches. Holland's court system relied on the use of Roman law and university-trained advocates and judges.<sup>14</sup> The Dutch example inspired the Scots to reform their educational system and to embrace the idea of specialised education.<sup>15</sup> During

<sup>10</sup> Esther Mijers, “Scottish Students in the Netherlands, 1680–1730”, in *Scottish Communities in the Early Modern Period*, ed. Alexia Groshean and Steve Murdoch (Leiden: Brill, 2005), 301–31 at 305. For specific known numbers of Scottish students at Netherlands universities see Esther Mijers, “*News from the Republic of Letters*: Scottish Students, Charles Mackie and the United Provinces, 1650–1750” (Leiden: Brill, 2012), appx.

<sup>11</sup> Mijers, “Scottish Students”, 305–06, 313.

<sup>12</sup> E.A. Underwood, *Boerhaave's Men at Leyden and After* (Edinburgh: EUP, 1977), 4–5.

<sup>13</sup> Kees van Strien and Margaret Ahsmann, “Scottish Law Students in Leiden at the End of the Seventeenth Century: The Correspondence of John Clerk of Penicuik, 1694–1697”, *LIAS*, 19 (1992), 271–330 at 279.

<sup>14</sup> Robert Feenstra, “Scottish-Dutch Legal Relations in the Seventeenth and Eighteenth Centuries”, in *Academic Relations between the Low Countries and the British Isles, 1450–1700: Proceedings of the First Conference of Belgian, British and Dutch Historians of Universities held in Ghent, September 30–October 2, 1987*, ed. H. De Ridder-Symoens and J.M. Fletcher (Ghent, 1987), 25–45 at 26.

<sup>15</sup> Christine Mary King, “Philosophy and Science in the Arts Curriculum of the Scottish Universities in the 17th Century”, PhD. diss. (University of Edinburgh, 1974), 337. Leiden's law faculty had also helped to reform the curriculum of the grammar school there the

the thirteenth and fourteenth centuries students from the Netherlands travelled to Italy and France to learn their professions but, from the fifteenth century on, universities were founded in the Netherlands to take on this role. Unlike those in Scotland, however, the universities in the Netherlands proved to be successful at providing the type of legal education their students wanted.

### Learning Law in the Low Countries

Legal scholars visiting the Netherlands could expect an education which focused on Roman law including a thorough grounding in the texts of the *Corpus iuris civilis*; the *Institutes*, *Digest*, *Code*, and the *Novels*. Courses in history and philology helped the scholars to understand these sources in their proper contexts and philosophy described the moral implications of the law. Legal scholars also studied the techniques of the eloquence they would need to plead in court and used mathematics as a basis for the structured forms they would need in practice. These students perceived law as a “polite, enlightened science, related to the study of philosophy, philology and history”.<sup>16</sup> Law teaching at Leiden had three forms. *Lectiones* (public lectures) took place daily during the academic year. *Collegia domestica* (private lectures) were offered for a fee of thirty or forty guilders a year and took place in professors’ homes. These were student-led and subjects such as natural law and public law would be offered in this way before they appeared in the mainstream curriculum.<sup>17</sup> *Disputationes* (disputations) were held weekly and were “regarded as an essential element of legal training”.<sup>18</sup> Professors might write up *disputationes* on specific themes for publication under their own names.<sup>19</sup>

Ulrick Huber, a former judge in the court of Friesland and a prolific author of legal works, was professor of law at Franeker from 1682.<sup>20</sup> His *De ratione juris docendi & discendi diatribe per modum dialogi nonnullis aucta paralipomenois* of 1688 set out his ideas about what he expected from students and the knowledge and skills they could expect to obtain when they studied with him.

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<sup>16</sup> 1690s. G.C.J.J. van den Bergh, *The Life and Work of Gerard Noodt (1647–1725): Dutch Legal Scholarship between Humanism and Enlightenment* (Oxford: Clarendon, 1988), 271–74.

<sup>17</sup> Cairns, “Importing”, 138, 146.

<sup>18</sup> Bergh, *Life and Work of Gerard Noodt*, 269.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid. 270.

<sup>20</sup> R. Feenstra, Margreet Ahsmann, and Theo Veen, *Bibliografie van hoogleraren in de rechten aan de Franeker Universiteit tot 1811* (Amsterdam: Koninklijke Nederlandse Akademie van Wetenschappen, 2003), 47.

Although he was a critic of some of the methods his fellow professors used, especially those at Leiden, Huber's comments offer a good general description of the legal training offered at Low Countries universities from the late seventeenth century on. Huber suggested that legal students should have a strong background in general studies before starting their law course. Huber's ideal preparations for the study of law were much like the education offered by the Scottish arts curriculum for:

he who applies his mind to the study of law should first work to learn literature and the arts tolerably well, for without them jurisprudence cannot be effectively understood. By literature I understand Latin and Greek literature, the former should be learned more precisely and thoroughly, the latter in such a way that the writings of the ancients can be handled clearly and rationally at least with the help of a translation.... Under the study of literature it is readily understood that I include history. I require the subjects, which are preparatory for the study of law – logic...and ethics. If anyone should add mathematics and physics, I am in favour but I do not dare to demand them. I do not wish Politics to be studied in advance but I wish it rather to accompany the study of law. Also, I have said nothing about the art of oratory, for the precepts of Rhetoric are implicit in the study of literature.<sup>21</sup>

Once he had these qualifications, a student could begin his legal studies. Law should not enter the syllabus until the student devoted "a whole year in preparatory studies". In his idealised vision, Huber

...would like my first year student to attend lectures on logic and ethics, commit to memory a *compendium* of universal history and see to it that he understands Suetonius clearly and fully. For in Suetonius most things relating to Roman and juridical antiquities present themselves to be understood in an easy and historic order.... Meanwhile, in his spare time progress must be made with reading other writers of ancient history, and also in composing, not only by reading but also by imitating the eloquence of ancient writers....there will be no lack of those who, in the same year, can master the basics of physics and mathematics then, when the study of law if begun in the second year, I do not think that the new law student should so devote himself to the law alone, that he abandons

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<sup>21</sup> Ulrich Huber, *De ratione juris docendi & discendi diatribe per modum dialogi nonnullis aucta paralipomenois*, trans. Margaret Louise Hewett (Nijmegen: GNI, 2010), 51.

his initial studies in the humanities and literature and considers that they do not concern him any longer.<sup>22</sup>

After this first year of learning arts and sciences, the law student could “attend lectures on the *Institutes* of Justinian and then continue with reading the elements of the whole subject”.<sup>23</sup> The “next year ought to be spent on the *Pandects*” for Huber

found that the most important factor of all in my practice and programmes is the following: namely that those students who, in the three years, which are occupied with the *Institutes* and the *Pandects*, spend their spare time in reading ancient writers, and hence are already acquainted with their subject, are students who can select and refer to the appropriate texts all the material for illustrating the Roman law which they find in philosophy, rhetoric, history and the poets.<sup>24</sup>

Huber thought that his three year legal studies programme equipped his students either for practice in the courts or for an academic career. Those who wanted to practice would “need instruction adapted to the custom of our day” but anyone who completed the four years of legal study under his guidelines would be “a praiseworthy jurist”.<sup>25</sup> When they had had their fill of *lectiones*, *collegia*, *disputationes*, and public lectures, usually after two or three years, Scottish scholars completed their cultural educations with visits to places of note across the continent.<sup>26</sup>

Scottish scholars who had completed the Scottish arts curriculum before travelling to the Low Countries could forego the preparatory stage recommended by Huber and begin their legal courses straight away. Duncan Forbes of Culloden was at Leiden from 1705 to 1707 having briefly studied law with John Spottiswood at Edinburgh in 1702. Forbes began to collect books for his Roman law courses before he travelled since he could find them more cheaply in Scotland. He may have been aware of this because his elder brother had made the trip thirteen years before.<sup>27</sup> George Mackenzie of Delvine studied in

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<sup>22</sup> Ibid. 52–53.

<sup>23</sup> Ibid. 52.

<sup>24</sup> Ibid. 54–55.

<sup>25</sup> Ibid. 56.

<sup>26</sup> Strien and Ahsmann, “Scottish Law Students” (1992), 283–87.

<sup>27</sup> George Menary, *The Life and Letters of Duncan Forbes of Culloden: Lord President of the Court of Session, 1685–1747* (London: Alexander Maclehose, 1936), 6–7.

Leiden starting in September 1707 and reported on his progress in letters to his father. His tutor Alexander Cunningham introduced him to Professor Johannes Voet.<sup>28</sup> Mackenzie combined his legal studies with history and classics. He described a typical scholarly day as starting

In the morning precisely by 6 o clock I rise & reads till 8 what Vout [sic] commended on the Day before that to 10 I read what he is to speak on that day using Vinnius his notes & Commentary with Vout his own Commentary on the institutes, at 10 I goe to my Colledge & upon my return I read over what he explained....from 1 or 2 or sometimes to 3 I walk or hears Perizonius his publick Colledges...from 7 to 10 I read over what was explained in the Institutes & on Saturday I read over all I went through all the week of the course.<sup>29</sup>

As he moved through his study of the books of the *Corpus iuris civilis*, Mackenzie combined his legal studies with Greek, Latin, Hebrew, and French, added a private college on Grotius, and took a college on Suetonius with Perizonius.<sup>30</sup>

### **Scottish Travellers: John Erskine of Carnock and John Clerk of Penicuik**

Aujourd’hui les *Anglois, François, Allemans, Danois, Suedois, Polonois, Hongrius, Transylvains*, & autres Nations vont à Leide, pour se former l'esprit, acquerrir la connoissance des Langes, les Sciences Divines & Humaines, & se render, par ce moyen capables de server leur Patrie....<sup>31</sup>

Scant documentary evidence survives about Areskine's personal experience as a student abroad. He was in Leiden by 2 February 1708 since this is when he matriculated into the university as "Carolus Areskin, *Scoto-Britannus*".<sup>32</sup>

<sup>28</sup> Mijers, "News", 81.

<sup>29</sup> George Mackenzie, quoted in Mijers, "News", 81.

<sup>30</sup> Meijers, "News", 82–83.

<sup>31</sup> *Les delices de Leide: une des célèbres villes de l'Europe, qui contiennent une description exacte de son antiquité, de ses divers agrandissemens, de son academie, de ses manufactures, de ses curiosités, & généralement de tout ce qu'il y a de plus digne à voir* (A Leide: Chez Pierre Vander Aa, 1712), 68.

<sup>32</sup> *Index to English Speaking Students who have Graduated at Leyden University*, ed. Edward Peacock (London: Index Society, 1883), 4. The Dutch academic year started in February. Mijers, "News", 67.

Beyond this little information survives to tell us about Areskine's studies in the Netherlands. Having been a regent and now a professor, Areskine was not a typical Scottish travelling legal scholar. We can, however, look to other sources and to his limited remaining correspondence from the time to get some ideas about how he might have spent his time abroad. Two memoirs from the decades before Areskine travelled can help to fill gaps in information. The journal of John Erskine of Carnock (1662–1743) and the memoirs and correspondence of John Clerk of Penicuik (1676–1755) provide details about the experiences of Scots students in the Netherlands.<sup>33</sup>

Areskine's kinsman John Erskine of Carnock travelled to the Netherlands as an exile in the mid-1680s. He split his time between Leiden, Amsterdam, and Utrecht where he met Lord Stair and other members of the Scottish exile community. These political and religious exiles were Whigs who refused to swear allegiance to James VII/II. They would return to Scotland after the accession of William and Mary. In the 1680s, they helped to reinforce the ties between Scotland and the Low Countries. Erskine was not specifically a scholar of law but he was interested in legal learning. Although he matriculated at Leiden as "Johannes Erskine, *Scotus*", on 17 March 1685,<sup>34</sup> Erskine did not limit himself to the offerings there. Erskine combined his legal studies with a general liberal arts curriculum. In addition to law lectures, Erskine attended anatomical dissections, studied theology, and attended courses in physics.<sup>35</sup> His journal provides information about the often informal method used in studying when abroad. Students would approach professors and ask to be taught specific subjects. At Utrecht, on 9 November 1685, for example, Erskine

...was this morning at Van Moyden, a professor at law, from whom I designed to have a college of the institutes of the civil law, tho he had ended the first two books. Stewart of Pardiven and I went to the professor together, he gave us some hopes that he would teach us the first two bookes at the time of the vacance.<sup>36</sup>

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<sup>33</sup> For the support mechanisms available to Scots students in the Netherlands see Mijers, "News", 49–57.

<sup>34</sup> *Index*, 33.

<sup>35</sup> John Erskine, *Journal of the Hon. John Erskine of Carnock, 1683–1687*, ed. Walter MacLeod (Edinburgh: Scottish History Society, 1893), 166, 176.

<sup>36</sup> Johannis van Muyden (1652 or 1653–1729) taught at Utrecht from 1681. The first edition of his textbook on the *Institutes* appeared in 1687. Margreet Ahsmann, R. Feenstra, and C.J.H. Jansen, *Bibliografie van hoogleraren in de rechten aan de Utrechtse universiteit tot 1811* (Amsterdam: North-Holland, 1993), 98; Erskine's fellow student was Walter Steuart of Pardovan, later the author of *Collections and Observations Methodiz'd Concerning the*

Erskine finished his *collegia* on 17 December 1685.<sup>37</sup> Erskine appreciated the flexibility of the academic system: he was able to move around the Netherlands as his political situation demanded. Erskine was an ambitious scholar who in March 1686, still at Utrecht, complained that “My having seven colleges was troublesome and like to turn a burthen, having three in the forenoon and four in the afternoon, all after other”.<sup>38</sup> In addition to his punishing lecture schedule, Erskine took advantage of opportunities to purchase books at auctions.

John Clerk of Penicuik travelled to the Low Countries to study law in the 1690s. When he returned from his continental tour, Clerk became a leading figure in early eighteenth-century Edinburgh.<sup>39</sup> Clerk's cultural life and academic experiences abroad were probably more similar to Areskine's than those of Erskine of Carnock. Clerk was close in age to Areskine and had a similar undergraduate background in the Scottish arts curriculum. He had studied at the University of Glasgow before setting out for Leiden in October 1694.<sup>40</sup> Clerk shared with Areskine interests in mathematics, philosophy, and history. They certainly knew each other when both returned from their continental travels and established themselves in their legal careers. They would have met at Edinburgh's courts of law and both were founding members of the Philosophical Society of Edinburgh. Clerk offered architectural advice when Areskine decided to build a country house in the late 1730s. Clerk's continental experience is well documented. He corresponded with his father while he was abroad and reported on his studies. He also wrote a memoir in which he recalled his youthful experiences.

Clerk had mixed feelings about his legal training. His attitude to extracurricular studies was reminiscent of Areskine's protracted studies before he took his MA: Clerk was so obsessed by “Mathematiks and Phylosophy” that he could spend “a whole month without going out of the House or putting [sic] on my cloaths” until letters from his father reminded him to “slacken my pace and attend...civil law colleges”.<sup>41</sup> This was a danger also recognised by Huber who warned of the danger of extracurricular studies “based on experience” since

*Worship, Discipline, and Government of the Church of Scotland* (Edinburgh, 1709); Erskine, *Journal*, 165.

<sup>37</sup> Erskine, *Journal*, 170.

<sup>38</sup> Ibid. 182.

<sup>39</sup> Cairns, “Importing”, 136.

<sup>40</sup> Ibid.

<sup>41</sup> John Clerk, *Memoirs of the Life of Sir John Clerk of Penicuik, Baronet Baron of the Exchequer Extracted by Himself from His Own Journals, 1676–1755*, ed. John M. Gray (Edinburgh: EUP, 1892), 15.

those who linger long and much with philosophy, literature and history are so entrapped by their toils by their pleasantness and grace, that when they betake themselves to the law, they think they study thereof boring and harsh, and can scarcely force their minds to undertake the learning of it.<sup>42</sup>

Like Areskine, Clerk was interested in eloquence, ancient history, and music. Clerk spent five years at Leiden studying law with two of the professors who were still active at the time of Areskine's visit, Philip Reinhard Vitriarius and Johannes Voet.<sup>43</sup> He also travelled in Germany, Italy, and France. In 1699 he admitted that two or three years of study would have been enough for him to "be received into the faculty of Advocates at Edr" but summed up the benefits of his extended studies as that he "had studied law with some mathematicks and philosophy.... I had acquired a little more knowledge of the world". But the extra time abroad meant that he "had likeways spent at least 600 lib. Str. more than my Father knew of, which gave me a very great deal of trouble for many years after".<sup>44</sup> Clerk recognised the value of his academic experience and the importance of it for his future and wrote, "I think every man who has studied here at Leiden should at his return enter advocate, if it were only to let people see he has spent his time to the purpose, whether they have any expectation of either employment or preferment or not". On his return Clerk "passed both the privat and publick examinations with some applause, being admitted an Advocat".<sup>45</sup>

Areskine's educational grand tour of 1708 to 1711 began with studies in the Low Countries before he travelled to Italy and Germany. He indulged his love of music – he would later become a member of the Edinburgh Musical Society<sup>46</sup> – at the Venice Carnival of 1709–1710, paid intellectual homage to the antiquities of Naples and Rome, and visited the Leipzig Book Fair to deliver manuscripts for printing on behalf of one of his new Italian acquaintances. It is certain that Areskine used his time abroad to take advantage of the continental book market. As it had been for Erskine and Clerk, book buying would

<sup>42</sup> Huber, *De ratione juris*, 52.

<sup>43</sup> Vitriarius (1647–1720) was professor of law at Leiden from 1682 to 1719. Margreet Ahsmann and R. Feenstra, *Bibliografie van hoogleraren in de rechten aan de Leidse universiteit tot 1811* (Amsterdam: B.V. Noord-Hollandsche Uitgevers Maatschappij, 1984), 320. Voet (1647–1713) was professor of civil law at Leiden from 1683 to 1713. Clerk, *Memoirs*, 14–15.

<sup>44</sup> Clerk, *Memoirs*, 36.

<sup>45</sup> Kees van Strien and Margaret Ahsmann, "Scottish Law Students at Leiden at the End of the Seventeenth Century: The Correspondence of John Clerk, 1694–1697", *LIAS*, 20 (1993), 1–65 at 32.

<sup>46</sup> Roger L. Emerson, "The Philosophical Society of Edinburgh, 1737–1747", *British Journal for the History of Science*, 12 (1979), 154–91 at 190.

certainly have been a part of Areskine's academic experience but we do not have surviving evidence for any acquisitions Areskine made during his time as a student in the Netherlands.

### Books in the Low Countries

Book purchasing was an important part of the educational experience for Scottish legal students in the Netherlands. At the time when Scots students were taking advantage of the opportunities for legal education on offer at its universities, the Netherlands was the centre of book production and trade.<sup>47</sup> Students were able to buy books they were unable to obtain in Scotland or even London. Clerk offered to fulfil his uncle David Forbes's commissions "if it be possible" by going to auctions and "send[ing] them home with mine".<sup>48</sup> John Erskine of Carnock attended auctions at Leiden and Utrecht and had to "put up" his "books and other things" as he travelled throughout the Low Countries in the 1680s.<sup>49</sup> Despite the undoubted demand for books, political situations meant that book importation into Britain could be difficult and it remained low until 1714.<sup>50</sup> Dutch universities recognised the importance of book buying; they expected and encouraged their students and scholars to attend auctions. Book buying was so important that the daily lecture programme was suspended on days of book auctions in Leiden.<sup>51</sup> Or, to put it another way, in 1636 the university "stipulated that small-scale auctions were only allowed at times when there were no lectures, and larger ones only during vacations".<sup>52</sup> Between

<sup>47</sup> Rietje van Vliet, "Print and Public in Europe, 1600–1800", in *A Companion to the History of the Book*, ed. Simon Eliot and Jonathan Rose (Oxford: Blackwell, 2007), 247–58 at 248–49. For a discussion of the book trade between Scotland and the Low Countries in the sixteenth and seventeenth centuries, see Alastair J. Mann, *The Scottish Book Trade, 1500–1720: Print Commerce and Print Control in Early Modern Scotland: An Historiographical Survey of the Early Modern Book in Scotland* (East Linton: Tuckwell, 2000), 67–93. Mann focuses on religious publishing showing that the publishing links between the regions were of long standing and had important economic, religious, and political significance.

<sup>48</sup> Strien and Ahsmann, "Scottish Law Students" (1993), 57.

<sup>49</sup> Erskine, *Journal*, 113, 110, 177–78.

<sup>50</sup> Giles Barber, "Book Imports and Exports in the Eighteenth Century", in *Sale and Distribution of Books from 1700*, ed. Robin Myers and Michael Harris (Oxford: Oxford Polytechnic, 1982), 77–105 at 90.

<sup>51</sup> Bergh, *Life and Work of Gerard Noodt*, 95.

<sup>52</sup> Otto S. Lankhorst, "Dutch Book Auctions in the Seventeenth and Eighteenth Centuries", in *Under the Hammer: Book Auctions since the Seventeenth Century*, ed. Robin Myers,

1677 and 1708 an average of twenty five auctions occurred in Leiden every year and the presence of the university at Leiden ensured a steady supply of second hand books. Leiden booksellers also established themselves as importers of books and libraries from other places.<sup>53</sup> Auctions were advertised in newspapers and catalogues were widely available. As many as 27,500 book catalogues were produced in Holland between 1599 and 1800.<sup>54</sup>

### *A Bookseller of Leiden*

The Leiden bookseller Pieter van der Aa published a guide to his city in 1712. Among the sights he recommended in *Les delices de Leide* were the university's famous anatomy theatre, botanic garden, the university library, and "la célèbre Imprimerie d'Elezevier" where scholars could buy books in Greek, Latin, Hebrew, and Arabic.<sup>55</sup> *Les delices de Leide* was a marketing document: Aa had purchased most of the Elzevier stock at auction after the firm folded in 1712 as well as half of its famous type and two of its presses. He also bought the Elzevier family home and printing gallery. He replaced the family as the university's printer at Leiden.<sup>56</sup> Aa was an international dealer in books with contacts in Frankfurt, Berlin, Venice, Paris, London, and St Petersburg.<sup>57</sup> A book Areskine owned which Aa published – and which was described in his catalogue as "Ex typis Van der Aa" was an edition of Cicero's *Opera omnia* of 1692. This would probably have been an easy book for Areskine to come by even after his return to Britain. Aa had asked the advice of the English bookseller Samuel Smith regarding its publication and offered a twenty per cent discount if Smith would buy at least two hundred copies of the finished product. When the book was

Michael Harris and Giles Mandelbrote (London: British Library; Newcastle, DE: Oak Knoll, 2001), 65–88 at 69.

- 53 Laura Cruz, "The Secrets of Success: Microinventions and Bookselling in the Seventeenth-Century Netherlands", *Book History*, 10 (2007), 1–28 at 21–22, 4.
- 54 Lankhorst, "Dutch Book Auctions", 68. For examples see "Book Sales Catalogues of the Dutch Republic, 1599–1800", a short title catalogue. Available at <<http://bsc.idcpublishers.info/>> accessed 28 Nov. 2012.
- 55 *Delices de Leide*, 72. For descriptions of Leiden by visitors ranging in date from 1663 to 1718 see Kees van Strien, *Touring the Low Countries: Accounts of British Travellers, 1600–1720* (Amsterdam: Amsterdam University, 1998), 227–37.
- 56 P.G. Hoftijzer, "The Leiden Bookseller Pieter van der Aa (1659–1733) and the International Book Trade", in *Le magazine de l'univers: The Dutch Republic as the Centre of the European Book Trade: Papers Presented at the International Colloquium held at Wassenaar, 5–7 July 1998*, ed. C. Berkvens-Stevelinck and others (Leiden: Brill, 1992), 169–84 at 169–70.
- 57 Ibid. 172; Laura Cruz, *The Paradox of Prosperity: The Leiden Bookseller's Guild and the Distribution of Books in Early Modern Europe* (New Castle, DE: Oak Knoll, 2009), 178–79.

printed in both quarto and duodecimo sizes, Smith bought 150 of each size.<sup>58</sup> Areskine's copy was in the smaller format and was one of his collection's twenty or so titles relating to Cicero who was one of the favourite role models of early modern Scottish advocates.<sup>59</sup>

In his catalogue, Areskine specifically noted that four of his books were products of the Elzevier presses. Although the firm published books and ran book shops throughout Europe, Areskine's Elzeviers which include details about their printer all came from Amsterdam. He had at least nineteen Elzevier publications produced in Amsterdam. His list shows that he possessed at least fourteen Elzevier books printed in Leiden. This means that Areskine had at least thirty-five books produced by various Elzevier presses in his library. He probably had more: several of the Elzevier printers used false imprints during the firm's long history. The famous Elzevier duodecimos were later the darlings of bibliomaniacs who cherished their appearance and historical legacy but in Areskine's time they were appreciated as serious tools for learning.

Early lovers of Elzevier publications were bibliophiles not bibliomaniacs. Sir Thomas Browne read his Elzevier copy of Horace to death and wished for it to be buried with him "in its leather case".<sup>60</sup> Scholarly book buyers appreciated the Elzeviers' small format publications, clear printing, reasonable prices, and accurate text. The Elzeviers worked with contemporary scholars and they were willing to print controversial works.<sup>61</sup> However, most Elzevier texts were practical books for practical scholars and it is easy to imagine Areskine buying them as a travelling student and then much later packing a selection of them to take on his travels across Scotland as a circuit judge. Areskine's Elzeviers span the firm's whole period of activity and cover a range of subjects. The Elzeviers dominated the Dutch book market and Areskine had many more of their books in his list beyond the few specifically noted as "Elzev." or "Elzevir" on his list. All of Areskine's Elzevier entries which include details about their printer were designated as octavos. They include a two volume *Corpus iuris civilis* from 1700, the comedies of Plautus from 1652 which declared that it was the most accurate edition, and two copies of Henning Arnisaeus's *Doctrina politica* both of 1651. Even

<sup>58</sup> Hoftijzer, "Leiden Bookseller", 174–75.

<sup>59</sup> See e.g. George Mackenzie, *Oratio inauguralis habita Edinburgi Id. Mar. 1689. A Dom. Georgio Mackenzeo, De structura bibliothecae purè juridice, et hinc De vario in jure scribendi genere* (London, 1689), 6, where "Nobis placebit Cicerorem Advocatum illum gloriosum æmulari...omnibus triumphis marjoram Lauream adeptus est".

<sup>60</sup> Thomas Browne, "Will", quoted in David W. Davies, *The World of the Elseviers, 1580–1712* (The Hague: Martinus Nijhoff, 1954), 150. The "z" spelling was used in the early modern period.

<sup>61</sup> Davies, *World of the Elseviers*, 105, 144.

after the company dissolved in 1712, Elzevier publications remained widely available. It was not until the mid-eighteenth century that buyers began to worry that the small Elzevier books were becoming scarce.<sup>62</sup>

### *Auctions and Catalogues*

Book auctions were very popular in Holland and millions of books were sold at them.<sup>63</sup> Holland had the highest literacy rate in Europe but its citizens had limited access to libraries. A lack of attachment to books by private owners or their descendants combined with a large book producing industry ensured a steady supply of stock. Students were a target market for auctions since they had to buy their own books rather than relying on institutional library provision.<sup>64</sup> Travelling scholars could pick up books for and send catalogues back to friends, family, and institutions. They provided an important link for cross-national sellers and buyers throughout the early eighteenth century. Leiden booksellers were very aware of their international market and they exploited the trade infrastructure of Holland which allowed freight transport on a network of lakes and canals. Booksellers used the Dutch postal service to send catalogues domestically and to potential customers abroad. The university provided valuable contacts since Leiden booksellers could supply local academics with catalogues which they would send to an international network of scholars.<sup>65</sup>

Book buyers, however, needed to be wary if they were to escape some sharp practices. In 1691, for example, Pieter van der Aa created a fictitious seller of a private library called "W. Snellonius" to sell off his surplus stock.<sup>66</sup> Even the most prestigious of buyers had to consider his purchases with care. The Amsterdam bookseller Louis Remard wrote to Areskine's brother Dr Robert Areskine in his capacity as Peter the Great's librarian in 1716 to warn him of crooked dealing by Pierre Husson of The Hague whose catalogue of "une Bibliothèque Moderne" was nothing of the sort but rather an attempt to shift poor quality old stock. Booksellers would also top up auctions of private libraries with stock from their shops which did not relate to the collection offered for sale.<sup>67</sup>

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62 Ibid. 149.

63 Lankhorst, "Dutch Book Auctions", 77.

64 Ibid. 69–70.

65 Cruz, "Secrets", 7, 11.

66 W. Snellonius, *Catalogus rarissimorum & vere insignium...librorum* (Leiden: Pieter van der Aa, 1691), "Book Sales Catalogues", Record 1295 <<http://bsc.idcpublishers.info/>> accessed 21 Aug. 2011.

67 Lankhorst, "Dutch Book Auctions", 72.

### *Legal Textbooks*

The contents of Areskine's 1731 library list suggest that he made purchases while studying abroad. His brother Robert had certainly started his impressive library while studying abroad so it is not too much of a stretch of the imagination to assume that the younger Areskine followed this family example. It is likely that Areskine studied with one or more of the Leiden professors who were in post during his educational tour of 1708 to 1711. These were Johannes Voet (1647–1713), Philippus Reinhardus Vitriarius (1647–1720), Antonius Matthaeus III (1635–1710), and Gerard Noodt (1647–1725).<sup>68</sup> Areskine had books by all of them in his list.

Voet's textbook, *Commentarius ad Pandectas*, "dominated the market completely".<sup>69</sup> *Commentarius ad Pandectas* explained Roman legal principles and considered their relevance for modern use. Voet saw law as both a science and an art: it could be applied creatively.<sup>70</sup> In the eighteenth century, especially in the period when Areskine was active in his profession, the influence of Voet was "clearly discernible in the judgements of the Scottish Courts".<sup>71</sup> Voet's "Commentary" was "a very cleverly made and practically useful synthesis of Roman law as it applied in Holland"<sup>72</sup> and his *Compendium juris juxta seriem Pandectarum* was "known to generations of students".<sup>73</sup> Clerk, who studied with Voet for a year, recalled that "he kept close to his own Compend on the Institutes and Pandects".<sup>74</sup> From the German born scholar of public law Vitriarius<sup>75</sup> who related his studies to natural law, Areskine had *Institutiones juris naturae et gentium* and *Institutiones juris publici Romano-Germanici*

68 Cairns, "Importing", 145. Cairns has discussed the books Areskine may have acquired as a student in "The Origins of the Edinburgh Law School: The Union of 1707 and the Regius Chair", *Edinburgh Law Review*, 11 (2007), 300–48 at 334–9.

69 Bergh, *Life and Work of Gerard Noodt*, 263.

70 J.W. Wessels, *History of Roman-Dutch Law* (Grahamstown, Cape Colony: African Book Co., 1908; repr. with a new introduction by Michael H. Hoeflich, Clark, NJ: Lawbook Exchange, 2005), 320–21.

71 Robert Feenstra and C.J.D. Waal, *Seventeenth-Century Leyden Law Professors and Their Influence on the Development of Civil Law: A Study of Bronchorst, Vinnius and Voet* (Amsterdam; Oxford: North-Holland Press, 1975), 85.

72 Bergh, *Life and Work of Gerard Noodt*, 94.

73 Cairns, "Importing", 137. At least one anonymous Scottish student was less than enthralled by this textbook and wrote in the fly-leaf of his copy: "Thy Compend, Voet, is dull, confus'd and dry, Thou hast no Genious [sic], and no patience i". Quoted in Feenstra and Waal, *Seventeenth-Century Leyden Law Professors*, 85.

74 Clerk, *Memoir*, 15.

75 Cairns, "Importing", 136–37.

*selectae*. Areskine would not have had *Reinhardi Vitriarii...Institutiones juris publici Romano-Germanici selectae* at the time of his studies since his copy was in an edition that was not published until 1714. Vitriarius was popular with Scots law students at the time of Areskine's visit.<sup>76</sup> Clerk thought Vitriarius was "certainly one of the greatest lawyers in the world" and noted that he had "a particular kindness especially to Scotsmen".<sup>77</sup>

Areskine's collection was rich in materials associated with the Dutch "elegant" school of legal humanism.<sup>78</sup> These legal humanists concerned themselves with editing, amending, and annotating Justinian's texts, and studying and interpreting classical legal writings.<sup>79</sup> As might be expected for a scholar who followed this approach, Areskine had a large collection of Roman law titles as well as his own copy of Torelli's three-volume *Pandectae Florentinae* of 1553. The publication of the *Florentina* was a turning point in legal scholarship. Some thought the texts of the *Corpus iuris civilis* should be treated as having the same authority as the bible but others, such as Jacques Cujas and other French humanists and later scholars, thought the text was open to amendment and interpretation.<sup>80</sup> Noodt was a leading promoter of the latter opinion. All of the books by him in Areskine's library are dated between 1698 and 1705.

The "elegant" scholar Noodt did not use a textbook for his civil law courses. He wrote instead on particular topics of interest to humanist scholars of law. His approach was influenced by the mathematical studies he had undertaken as an undergraduate and by natural law.<sup>81</sup> Areskine had his study of usury, *De foenore et usuris* which explored its subject within its historical and comparative legal contexts, his *De forma emendandi doli mali* which examined ancient contract law, and his *Opera varia* which included his humanistic monographs *De jurisdictione et imperio libri II* and *Ad legem Aquiliam liber singularis* on Roman public law and compensation for losses respectively.<sup>82</sup> Vitriarius and Noodt both offered a *Collegium Grotianum* when Areskine was at Leiden.<sup>83</sup> It is not impossible that he studied with both of them. Matthaeus III shared Noodt's humanist interests.<sup>84</sup> Areskine had his *Miscellaneæ exercitationes, adversus*

76 Cairns, "Origins", 335.

77 Strien and Ahsmann, "Scottish Law Students" (1992), 319, 322.

78 Cairns, "Origins", 337–38. For the significance of Dutch "elegant" books found in the 1731 list, see *Ibid.* 334–39.

79 Bergh, *Life and Work of Gerard Noodt*, 113.

80 *Ibid.* 121–22.

81 *Ibid.* 20, 131, 139, 185.

82 *Ibid.* 181–91, 244–52, 167–81.

83 *Ibid.* 271.

84 *Ibid.* 98.

*Abrahamum a Wesel.* Books used as textbooks recommended by Low Countries professors made their way back to Scotland with scholars when their studies abroad ended. These books formed the core collections of the legal libraries assembled by Scottish advocates which they then used in the practice of their profession.

### Two Scottish Scholars in Leiden: John Clerk of Penicuik, William Mure and Their Books

John Clerk of Penicuik started buying his books while studying abroad and documented the process. His memoirs and correspondence record his book buying and reveal his lifelong interest in books and libraries. Clerk developed a passion for book buying while in the Netherlands and his correspondence with his father, often to request more funding, tells the story of the development of his collection. Clerk was careful to justify his spending to his father and his letters show that he sometimes doubted his ability to create a library he would use for the rest of his life and career. His confidence grew as he became an experienced buyer and he had a collection he was proud of by the time he returned to Scotland. Areskine was, of course, a much older scholarly traveller than Clerk, may already have had a small travelling library, and, as a former regent, doubtless had more confidence in his ability to select the books he wanted. Clerk's detailed account of his book purchasing, however, offers valuable insights into a travelling student's experiences of using and buying books.

Clerk had two books with him when he arrived in Leiden as a student late in 1694. He had set off on his travels with an edition of Justinian's *Institutions* and J.F. Boeckelmann's *Compendium institutionum Justiniani*.<sup>85</sup> Book buying and reading soon became important parts of his routine and by the end of February 1695 Clerk had a small library of eleven books. Clerk tried to keep costs down by requesting that books from his father's library be sent to him. On 14 March 1695 Clerk asked that "...the *Corpis [sic] Juris* which is in your study; and *Calvinus Lexicon juridicum* and *Craig De feudis*" be sent to him since "These three books are recommended extraordinarily to us". He reported that

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85 Strien and Ahsmann, "Scottish Law Students" (1992), 298. In Scotland, John Spottiswoode used Boeckelmann's book as a textbook for his private Roman law classes. John W. Cairns, "Spottiswoode, John, of that Ilk (1667–1728)", *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/26168>> accessed 14 Sept. 2011. Areskine had a copy of the edition of 1694. It is safe to assume that Areskine had copies of the books mentioned in the text that follows.

I have bought a little *Corpus Juris* without notes, which cost me 6 guilders, because it was more ready to take with me to the colleges than a great one. Nevertheless we have always the *Corpus Juris* with Gothofredus' notes recommended to us, which at Leiden or at Amsterdam is sold for no less than 36 guilders. Such a corpus is too dear to buy...so that I fancy the corpus which you have with Gothofredus' notes will do well enough. Craig *De Feudis* is not recommended to us by our professors till we be learning the feudal law, so that it is all one whether you send it with this fleet or with another.<sup>86</sup>

Another of Clerk's early purchases was a copy of Grotius' *De jure belli ac pacis*, which he described as "a book everybody takes at the beginning, being a system of the laws of nature; so that by understanding it we come to consider how the civil law and the laws of nations differs from the law of nature".<sup>87</sup> Professors encouraged their students to read works of Roman history and Clerk "got a catalogue from my professor of all the Roman authors in their best editions". By July 1695, Clerk's reading was going well despite a bout of illness which caused him to leave Leiden to convalesce at Looduinen. He reported that he "went through Titus Livius before I came here, so the books I have with me are Tacitus and Suetonius, the Novels and Institutes in Greek and three other law books". In September 1695, back at Leiden, Clerk relayed his doubts about purchasing the highly recommended and recently published but pricey *Thesaurus antiquitatum Romanarum* by Graevius although students were "all advised to buy it...but whether I shall buy it or not I shall take your advice".<sup>88</sup> Graevius's work was published in twelve volumes from 1694 to 1699. At the time Clerk was considering purchasing it only the first two volumes, both published in 1694, were available.<sup>89</sup> Clerk's father in reply thought that his own collection of books would not be enhanced by this addition which he called "an extravagant dear book" at 100 guilders "because I am sufficiently provided already...on that subject".<sup>90</sup> This remark shows that Clerk's father was aware of the books in his library and of any gaps he wanted to fill.

In October 1696, after nearly two years of studying and book collecting, Clerk proudly reported the state of his library to his father: "As for my books, I have near 400 guilders worth, which are all choice books and few or none of

<sup>86</sup> Strien and Ahsmann, "Scottish Law Students" (1992), 326, 329–30.

<sup>87</sup> Ibid. 328.

<sup>88</sup> Strien and Ahsmann, "Scottish Law Students" (1993), 28, 14–15.

<sup>89</sup> Ibid. 22.

<sup>90</sup> Ibid. 25.

them to be got in Scotland. I shall put them in two timber cases". The mention of cases was for shipping: the books were to be returned to Scotland while Clerk continued his continental tour. But not all of the acquisitions were packed away immediately. Clerk assured his father that his quest for knowledge was ongoing and that he would continue his educational activities as he travelled to Italy:

I design to take with me besides my linens and clothes, my Corpus Juris, the Institutes together with the compend I learned, my bible with some other little books and if I should read only law for two hours a day...I should not only keep what I have learned, but likewise learn more.<sup>91</sup>

In Clerk's case his primary focus, at least as he presented it for his parent, was reading the books as part of his academic process rather than merely collecting them.

William Mure studied at Leiden a few years after Clerk. Mure started his book collection while studying abroad from about 1700 to 1703.<sup>92</sup> He matriculated in the Faculty of Medicine in 1700 but his studies included law, languages, and history.<sup>93</sup> His catalogue shared many books in common with Areskine's on both legal and miscellaneous topics. Although he divided his books by size, Mure did not include publishers or dates in his list but the authors and titles he recorded allow for matching with Areskine's catalogue using Mure's descriptions. To give just a few examples, both of their legal libraries included, as described in Mure's catalogue, "Grotius de jure belli at [sic] pacis", "Puffendorf [sic] de jure naturae et gent.", "Vinnius ad Inst.", and "Voet's little Pandects". Books on general subjects included "Bodinus de Rep.", "Barclaij Argenis et Satyricon", and "Le Isola piu famouse, & c.". Mure, like Areskine, had a good selection of grammars and dictionaries for foreign vernacular languages. In place of the expensive edition of Graevius that Clerk and his father had balked at buying, Mure instead had a copy of *Joannis Rosini antiquitatum romanarum corpus absolutissimum* for his Roman history studies.<sup>94</sup> Areskine also had the

<sup>91</sup> Ibid. 57.

<sup>92</sup> "Introductory Memoir", in *Selections from the Family Papers Preserved at Caldwell, part first MCCCLXCIVI–MDCCCLIII* (Glasgow: Maitland Club, 1854), 28.

<sup>93</sup> Mijers, "News", 121.

<sup>94</sup> William Mure, "Catalogue of Books belonging to Will<sup>m</sup> Mure (afterwards of Caldwell & Glanderstone) – Leyden 1700–1703", in *Selections from the Family Papers Preserved at Caldwell, part first MCCCLXCIVI–MDCCCLIII* (Glasgow: Maitland Club, 1854), 220–23.

Rosini history in an edition printed in Paris in 1613. It is clear that students took advantage of cheaper alternatives to the readings recommended by professors when they were available. When he returned to Edinburgh, Mure was publicly examined and “found sufficiently qualified” by the Faculty of Advocates on 13 July 1706.<sup>95</sup>

Based on the evidence from the libraries developed by Clerk and Mure and from Areskine’s library list, the books collected by Scottish legal scholars in the late seventeenth and early eighteenth centuries shared certain characteristics. They all included books written, recommended, and used by professors in the Low Countries. Classical literature is well represented in all three collections. The presence of aids for understanding foreign vernacular languages indicates that legal *virtuosi* were able to read the books they acquired that were printed in these languages. The libraries Scottish legal students assembled were therefore international in scope. They were not limited to legal topics, although these dominated their collections, but rather included books that enhanced their legal learning by including classical scholarship and historical works. As they continued their travels across the continent, they added works relating to history and the arts.

### **Italy**

Although it lacks details about individual titles, his surviving correspondence confirms that Areskine purchased books in Italy. He wrote to his brother from Rome in May 1710: “I have bought a good deal of Italian and other books here, the Lord know if everr [sic] I shall get them all safe home to Scotland”.<sup>96</sup> That fifteen books with Rome as their place of publication were listed in the 1731 manuscript seems to indicate that Areskine found adequate transportation arrangements. All of these were published before 1710.

Areskine may have met one of the Italian authors whose books he owned while he was in Rome. Gianvincenzo Gravina’s works, both legal and literary, are present in Areskine’s list. Areskine found a warm welcome in Rome where he thought “acquaintance is much easier to be made with people of Quality than in any place els [sic] in Italy”.<sup>97</sup> Later in the year, Areskine had some of Gravina’s manuscripts in his possession when he visited the Leipzig Book Fair:

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95 *The Minute Book of the Faculty of Advocates, 1: 1661–1712*, ed. John Macpherson Pinkerton (Edinburgh: Stair Society, 1976), 265.

96 Charles Areskine, “Letter” (10 May 1710), NLS MS 5072, f. 8v.

97 *Ibid.*, f. 8.

he was transporting them to Holland so that they could be published.<sup>98</sup> Gravina's *Origines iuris civilis*, originally published in Naples in 1701 and reprinted in Leipzig in 1708, had secured his international reputation as a jurist. The Leipzig professor Johann Burkhard Mencken (1674–1732) oversaw the publication of the 1708 edition with the purpose of disseminating Gravina's work north of the Alps.<sup>99</sup> Gravina was also well known as a cultural theorist who believed that poetry had the power to reform society. His *Della ragion poetica* published in Rome in 1708 expressed this view.<sup>100</sup> Gravina was one of the leading figures in the *Accademia dell' Arcadia*, a group of intellectuals who sought to reform literature and culture. The *Accademia* was made up of minor nobles, clerics, and lawyers who met regularly to read their poetry, organise their publishing programme, and, less formally, to converse.<sup>101</sup>

### *Cultural Concerns*

Areskine may have acquired some of the language dictionaries and travel guides listed in his 1731 catalogue to enhance his experience as a tourist. Areskine's list includes dictionaries and grammars for French, Italian, German, and Spanish and combinations of them. There are, however, no aids for Dutch in the 1731 list. It is likely that Areskine could speak some Dutch. John Clerk reported in his *Memoirs* that he "spoke Dutch, French, and Italian pretty readily" by the end of his tour and it is likely that most travelling Scottish students would have picked up enough of these languages to get by.<sup>102</sup> Knowledge of Dutch was not important to Scottish tourists and students who could communicate in Latin or French with their learned peers. William Carstares resolved that while studying abroad he "would spend at least an hour [a day] in acquiring the french language, being, because of its universalitie, so very necessary

98 John H. Appleby and Andrew Cunningham, "Robert Erskine and Archibald Pitcairne – Two Scottish Physicians' Outstanding Libraries", *Bibliotheca*, 11 (1982), 3–16 at 14. The work may have been his *Orationes et opuscula* published in Utrecht in 1713 (SCTN, <<http://picarta.pica.nl/DB=3.11/XMLPRS=Y/PPN?PPN=238538400>>). This is the closest match for description given in Robert Areskine's correspondence. Areskine did not record a copy in his catalogue.

99 Douglas J. Osler, "The Fantasy Men", *Rechtsgeschichte*, 10 (2007), 169–92 at 181.

100 Gino Bedani, "Gravina, Gian Vincenzo (1664–1718)", in *The Oxford Companion to Italian Literature*, ed. Peter Hainsworth and David Robey (Oxford: OUP, 2002), 277.

101 Susan M. Dixon, *Between the Real and Ideal: the Accademia degli Arcadi and its Garden in Eighteenth-Century Rome* (Newark: University of Delaware, 2006), 22–23.

102 Clerk, *Memoirs*, 36. He studied French for a few months after his arrival on the continent. Strien and Ahsmann, "Scottish Law Students" (1992), 301.

for converse".<sup>103</sup> Although he had books in other foreign vernacular languages including French and Italian, Areskine listed no books in Dutch.<sup>104</sup> Areskine's travel guides for Italy and Italian cities included Florence, Naples, Rome, and Venice. He had a guide book for Pozzuoli on the fringes of Naples which featured among its attractions Cicero's villa. Although he did not list a specific travel guide for Padua, Areskine signed the register of the university there on 8 March 1710.<sup>105</sup> All of Areskine's Italian travel guides were published before 1710 so it is likely he bought them to use as he visited the country. He could also have acquired them from a shop like Pieter van der Aa's in Leiden which stocked maps and travel guides for a target market of educated tourists. Aa included his catalogue of these as a supplement to his *Les Delices de Leide*. If he kept them from other places he visited, the guides are not included in Areskine's 1731 list.

Most of the musical selections in Areskine's 1731 list are Italian operas which date from the time of his grand tour. The dates that these were performed and published suggest that Areskine was in Venice during the Carnival season of 1709 to 1710. The Venice Carnival ran from St Stephen's Day until Shrove Tuesday and each theatre would put on two or three operas during the season.<sup>106</sup> George Frederic Handel's *Agrippina* opened the season on 26 December 1709 and was performed twenty-seven times.<sup>107</sup> Tomaso Giovanni Albinoni's *Ciro* made its debut at the Carnival in 1710.<sup>108</sup> Francesco Gasparini's "Zamberlucco Intermezzi comici Musicali" appeared at the interval of his *La principessa fedele* on 10 November 1709.<sup>109</sup> The full title of what

<sup>103</sup> William Carstares, "Rules of Conduct, & c. by Principal Carstairs", in *Selections from the Family Papers Preserved at Caldwell, part first MCCCLXCIVI–MDCCCLIII* (Glasgow: Maitland Club, 1854), 168.

<sup>104</sup> For a discussion of Viscount Stair's lack of fluency in Dutch despite his visits and occasional residence in Holland see Adelyn L.M. Wilson, "Stair and the *Inleydinge* of Grotius", *Edinburgh Law Review*, 14 (2010), 259–68.

<sup>105</sup> John Ingamells, *A Dictionary of British and Irish Travellers in Italy, 1701–1800* (New Haven; London: Yale University, 1997), 340.

<sup>106</sup> Michael Talbot, "Vivaldi's Venice", *Musical Times*, 119/1622 (1978), 314–19 at 318.

<sup>107</sup> Anthony Hicks, "Agrippina", in *New Grove Dictionary of Opera*, *Grove Music Online. Oxford Music Online*, ed. Stanley Sadie <<http://www.oxfordmusiconline.com/subscriber/article/grove/music/O900058>> accessed 27 July 2010.

<sup>108</sup> Michael Talbot, "Albinoni, Tomaso Giovanni", in *Grove Music Online. Oxford Music Online*, <<http://www.oxfordmusiconline.com/subscriber/article/grove/music/00461>> accessed 27 July 2010.

<sup>109</sup> Dennis Libby and Angela Lepore, "Gasparini", in *Grove Music Online* <<http://www.oxfordmusiconline.com/subscriber/article/grove/music/43225pg1>> accessed 27 July 2010. Although Carnival was the opera principal season, Venice also had an autumn season

Areskine's catalogue describes as "Berengario Re d'Italia. Drama per műsica", *Berengario re d'Italia Drama per musica. Da rappresentarsi nel Teatro di Sant' Angelo il carnevale dell'anno 1709*, confirms that it too was related to the Carnival.<sup>110</sup> Areskine wrote to his brother in May 1710 reporting that he had been to "Venise" and Naples before returning to the "Seat o' the Beast" [Rome].<sup>111</sup> The travel guides and operas he kept in his library and recorded in his 1731 manuscript therefore provide information about where he went as well as what he saw and heard during his grand tour.

### Return to Edinburgh

By the time he returned to Edinburgh Areskine had decided on a change of career. This was fortunate since the holder of the Regius Chair of the Law of Nature and Nations, although he continued to take an interest in University affairs, does not seem to have attracted any students. Areskine's foreign studies in law had not just enhanced his knowledge for a teaching career: they also enabled him to qualify as an advocate. Areskine applied to the Lords of Session for admission to the Faculty of Advocates in 1711. The Dean of the Faculty of Advocates reviewed his application and arranged for examinations in private and in public on civil law which were done in Latin. Once he passed these examinations, Areskine read a lesson on civil law to the Lords of Session who then admitted him into the Faculty.<sup>112</sup> Areskine dedicated this printed version of his *Disputatio juridica* to his cousin, the earl of Mar, and demonstrated his cultural learning by including a quotation from Ovid in his ninth thesis.<sup>113</sup> Although he retained his professorship until 1734, Areskine did not resume his teaching career. Instead, Areskine found success in his new profession as a lawyer.

which lasted from early October to mid-December. Venetian theatres put on operas as early as November as Carnival previews. Talbot, "Vivaldi's Venice", 318.

<sup>110</sup> Full title available at <<http://www.worldcat.org>> OCLC 82602332, accessed 27 July 2010.

<sup>111</sup> Areskine, "Letter" (19 May 1710), f. 8.

<sup>112</sup> John W. Cairns, "The Formation of the Scottish Legal Mind in the Eighteenth Century: Themes in Humanism and Enlightenment in the Admission of Advocates", in *The Legal Mind: Essays for Tony Honoré*, ed. Neil MacCormick and Peter Birks (Oxford: Clarendon, 1986), 253–78 at 255. For the procedure for admitting advocates see also Finlay, *Community*, 123–27.

<sup>113</sup> Charles Erskine [sic], *Disputatio juridica, Ad Tit. 2. Lib. 28. ff. De liberis & posthumis haeredibus instituendis* (Edinburgh: Robert Freebairn, 1711), 5.

### Areskine and Education: Later Involvement

Areskine has been criticised for his lack of teaching during his time as Professor of the Law of Nature and Nations at Edinburgh. However, Areskine advertised his courses and, although they are incomplete, records show that Areskine was active in the administration of the university. He attended meetings, escorted students to services at Lady Yester's Church, signed official documents, and took his turns delivering weekly professorial addresses each winter term.<sup>114</sup> Areskine actively participated in the political management of the Scottish universities beyond his Edinburgh role. This was in connection with the activities of his patron from about 1724, Archibald Campbell, earl of Ilay, who wanted to control appointments at the universities. Areskine took part in a visitation of the University of Glasgow from 1725 to 1727.<sup>115</sup> He also tried to use his political influence during Ilay's unsuccessful attempt to engineer the appointment of the professor of mathematics at Aberdeen's Marishal College in 1727.<sup>116</sup> Areskine seems to have retained an interest in the administration of university life alongside his new career in law.

Areskine ensured that his sons had the benefit of good educations. Charles Erskine (1716–1749) was educated at home and attended classes at the University of Edinburgh before being sent to Winchester College in Hampshire. By 1732 his tutor there made it clear that any skills young Charles needed to attain were not academic:

I find He has been so well educated at Home; and has so well improv'd Himself in Academicall Study at The University of Edinburgh; that 'tis beyond my Skill to lecture him, than He has already learnt. My chief Care will be to acquaint Him with the Nature of our Discipline, Customs, & c.<sup>117</sup>

Charles graduated from Corpus Christi College, Cambridge in 1733.<sup>118</sup> He was admitted to the Middle Temple on 24 August 1733.<sup>119</sup>

<sup>114</sup> Cairns, "Origins", 343; Dalzel, *History of the University of Edinburgh*, 295–96.

<sup>115</sup> Emerson, *Academic*, 84.

<sup>116</sup> Roger L. Emerson, *Professors, Patronage and Politics: The Aberdeen Universities in the Eighteenth Century* (Aberdeen: Aberdeen University, 1992), 51.

<sup>117</sup> Thomas Broughton, "Letter" (18 July 1732), NLS MS 5074, f. 25.

<sup>118</sup> Romney Sedgwick, *The House of Commons, 1715–1754*, 2: *Members E-Y* (London: HMSO, 1970), 13.

<sup>119</sup> *Register of Admissions to the Honourable Society of the Middle Temple*, vol. 1, ed. Henry F. Macgeagh and H.A.C. Sturgess (London: Butterworth, 1949), 315.

Areskine's 1731 library list contains information that sheds light on his son's legal studies. Charles used some of his father's books while studying law in England. A note, found in the catalogue's index, reads: "15 Augt 1735 The 4 Books in these three articles taken out by Mr Areskines orders & sent to London to his son Mr Charles".<sup>120</sup> The books were Areskine's copies of Coke's *Institutes* and a further notation records that the first volume, was "not sent". This was "Coke upon Littleton" and presumably the younger Charles had by then acquired his own copy of this essential textbook for the study of English law. Several other textbooks of English law were recorded as being "taken to London" in undated notes throughout the 1731 manuscript including "D'Anvers Abridgment", John Selden's *Fleta*, "Vaughan's Reports", and "Hobart's Reports". It is possible that the younger Charles requested books from his father as John Clerk had done from his in the 1690s. Charles completed his English legal education by attending at the Westminster courts, discussing cases with his fellow students, and practicing his public speaking skills.<sup>121</sup> Some of his contemporaries at the Middle Temple were Philip Yorke, second earl of Hardwicke (admitted 1729), Henry Fielding (1737), and William Blackstone (1741).<sup>122</sup> Erskine was called to the English Bar on 26 October 1739. He transferred to Lincoln's Inn in 1743.<sup>123</sup>

Erskine seems to have studied abroad at some point between 1733 and 1739. Although it is not known where or when he studied abroad, Charles's efforts were commended by his father who wrote to him as he was about to be called to the English Bar:

I...readily acknowledge the goodness of Heaven to me in guiding you when in foreign Countreys, and returning you to your own with more health of body and soundness of mind than young Gentlemen Commonly import with them from parts beyond the Seas; may Comfort and success attend you in the way of life you are entering upon.<sup>124</sup>

Areskine's younger son James (1722–1796) was at the University of Glasgow by 1740 where his father wrote that he was "...very well pleased with the account

<sup>120</sup> NLS MS 3283.

<sup>121</sup> David Lemmings, *Gentlemen and Barristers: The Inns of Court and the English Bar, 1680–1730* (Oxford: Clarendon, 1990), 141.

<sup>122</sup> Arthur Robert Ingpen, *The Middle Temple Bench Book: A Register of the Benchers of the Middle Temple* (London: Chiswick Press, 1912), 351, 364–65.

<sup>123</sup> *Register of Admissions*, 315; Sedgwick, *House of Commons*, 13.

<sup>124</sup> Charles Areskine, "Letter" (23 Oct. 1739), NLS MS 5074, f. 221.

you give me of the progress of your studys, go...and be diligent now, and you'l [sic] reap the fruits of it after".<sup>125</sup> Details about James's education are obscure but his subsequent success in his legal career suggests that he too may have studied abroad at some point. He was admitted to the Faculty of Advocates on 6 December 1743.<sup>126</sup> His brother Charles sent a letter to him "to the care of Mr. Crawford, Banker at Rotterdam" dated 25 March 1745 which acknowledged his "safe passage to the Continent" and arrival at Hardingen. Other than meeting friends, there is no indication of the reason for James's visit in the letter.<sup>127</sup>

Areskine also helped other promising scholars. Areskine guided William Kirkpatrick's studies and later career after Kirkpatrick's father died in 1720. Kirkpatrick (1705–1778) studied at Edinburgh before proceeding to Leiden from 1723 to 1725 where he may have studied natural law with Johann Jakob Vitriarius.<sup>128</sup> Kirkpatrick succeeded Areskine as the Professor of the Law of Nature and Nations at Edinburgh in 1734, followed him as the MP for the Dumfries Burghs in 1731, and married his daughter Jean in 1746.<sup>129</sup>

Charles Areskine's *peregrinatio academica* completed his legal education while developing his credentials as a legal virtuoso. He returned to Edinburgh with the knowledge and skills he needed to become a lawyer. His experiences on the continent shaped his adult life and allowed him to become one of the most successful advocates of his day. He also had the beginnings of the book collection he started to document in 1731. Areskine had also developed intellectual and cultural interests that he shared with other Edinburgh lawyers who had been abroad and experienced them, including music, poetry, and history. When he returned to Edinburgh in 1711, Areskine had all the qualifications and connections he needed to participate in the intellectual communities and activities that characterised the Scottish Enlightenment.

<sup>125</sup> Charles Areskine, "Letter" (20 Dec. 1740), NLS MS 5075, f. 15.

<sup>126</sup> *Faculty of Advocates*, 67.

<sup>127</sup> NLS, MS 5156, Charles Erskine, "Letter" (25 Mar. 1745), ff. 113–113v at f. 113v.

<sup>128</sup> Son of Philippus Reinhardus Vitriarius. He taught at Heidelberg and Utrecht before moving to Leiden in 1719. Ahsmann and Feenstra, *Bibliografie*, 317.

<sup>129</sup> John W. Cairns, "The First Edinburgh Chair in Law: Grotius and the Scottish Enlightenment", in *Ex iusta causa traditum: Essays in Honour of Eric H. Pool*, ed. Rena van den Bergh (Pretoria: University of South Africa, 2005), 32–57 at 39–40. Speculations about the educations Areskine's daughters obtained will be considered in Chapter 7 below.

## A Flourishing Market for Books

### Catalogues, Sales, Auctions, and Buyers

The practice of travelling abroad for legal education left a deep impression on the development of Scots law. Scottish legal scholars studied with professors and jurists in the Netherlands who were exploring the relationship between Dutch and Roman law in a variety of ways. When they returned home, Scottish advocates had access to the collection held in the Advocates Library which included the works of Grotius, Vinnius, Voet, and other Dutch authors which they cited in their pleadings. Works by these authors were not printed in Scotland so students and lawyers either bought them while abroad or relied on imported copies or both.<sup>1</sup> Areskine and his fellow book collectors had several sources to find out what books were available in the British market.

Early modern book collectors could enlist the aid of agents, librarians, and other book experts. They could read catalogues and attend sales and auctions. Charles Areskine's library contained bibliographic information and catalogues and these may have inspired some of his book selections. Areskine collected the books he needed for his profession but his choices show that he was also interested in acquiring certain good quality copies of these. Books, both foreign and domestically produced, were widely available in London and Edinburgh. Once they knew what was available at auctions and in bookshops, learned book buyers were able to develop their collections.

### Book Collectors in Early Eighteenth-Century Britain

Despite wars, economic problems – not least the South Sea Bubble crisis of 1720 – and the practical problems of transporting books, the book trade boomed in early eighteenth-century Europe, particularly in Britain. British printers exported the latest medical and scientific books and booksellers

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<sup>1</sup> R. Feenstra and C.J.D. Waal, *Seventeenth-Century Leyden Law Professors and Their Influence on the Development of Civil Law: A Study of Bronchorst, Vinnius and Voet* (Amsterdam; Oxford: North-Holland, 1975), 85, 83.

imported books from all over Europe. The international book trade was especially strong in the 1720s to the 1740s when Dutch and French sellers sent large libraries to Britain to be sold by auction.<sup>2</sup>

British book buyers had many sources of books. They could purchase at auctions, fixed price sales, book shops, and from private individuals. The early eighteenth century was an era of obsessive book collecting. Important collectors included wealthy and powerful aristocrats such as Robert and Edward Harley, earls of Oxford, the earl of Sunderland, and Charles Areskine's patron, the earl of Ilay. Areskine's brother, the physician Robert Areskine, was, like Areskine, a new type of collector: a professional man whose money and contacts increasingly allowed him to compete with aristocratic buyers in an expanding marketplace for books.

Wealthy aristocrats and professional men dominated the British book buying market throughout the first half of the eighteenth century and many of them assembled large book collections. Buyers from these groups also had purses big enough to sponsor new works as patrons. Their subscription and collecting activities determined trends in publishing and inspired markets for both new and used texts. Library keepers, agents, and booksellers emerged to help collectors locate, buy, and organise their books. Sometimes collectors took on these roles themselves: both Charles and Robert Areskine acted as agents for book sales. The agent Alexander Cunningham of Block was a collector in his own right and the librarian Thomas Ruddiman was also a publisher and cataloguer. Collectors formed mutually beneficial networks to increase their buying opportunities. Students and other travelling scholars were part of these networks, and both private collectors and institutions such as the Advocates Library came to rely on their access to books and their knowledge of their intellectual contents.

### A Buying Guide for Early Modern Law Books: Jacques Godefroy, “Bibliotheca Juris Civilis Romani”

Book buyers did not only rely on catalogues, chance visits to shops, or their agents' advice to find the books they wanted. Some of the books early modern legal scholars acquired contained useful information about other texts they might like to add to their collections. In “Bibliotheca juris civilis Romani”, for

<sup>2</sup> Giles Barber, “Book Imports and Exports in the Eighteenth Century”, in *Sale and Distribution of Books from 1700*, ed. Robin Myers and Michael Harris (Oxford: Oxford Polytechnic, 1982), 77–105 at 89–90.

example, the second part of his *Manuale iuris*, the legal scholar and internationally renowned jurist Jacques Godefroy (1587–1652) listed a range of books and provided bibliographical guidance for scholars of Roman law. Godefroy's work retained its usefulness for nearly a century. It was one of the earliest bibliographies of Roman law books and commentaries on them, it showcased the humanist approach to legal scholarship, and its frequent reissue meant it was widely available to scholars and jurists throughout the sixteenth and seventeenth centuries.<sup>3</sup>

Areskine's 1731 manuscript list includes two editions of Godefroy's *Manuale iuris*.<sup>4</sup> The first of these is either the 1665 or the 1672 edition: both editions were published in Geneva. The ink entry gives "1665" but a note was later added in pencil saying "1672". Either of these is plausible since the 1665 edition was the seventh edition in duodecimo and the eighth was an octavo in 1672 and Areskine's manuscript does not divide the formats with enough precision to determine which it was by size. It seems likely that the 1672 version was meant since the correction was added or perhaps Areskine obtained a newer edition to replace an older copy. A copy of either of these editions with an Areskine provenance has not yet been located. The identity of the second copy is certain. Described on the following line as "Another Copy" and dated 1676, this is the ninth edition of *Manuale iuris* which was published in Leiden. It is now in the NLS at shelf mark Alva.143 and it contains Areskine's bookplate. Although there are no notations or other marks in Alva.143 which might indicate that Areskine used Godefroy's "Bibliotheca" as a buying guide, there are so many matches between the recommended list and the 1731 manuscript that are probably not coincidental. In addition to *Manuale iuris*, Areskine owned Godefroy's edition of the *Codex Theodosianus*, three of his other studies of pre-Justinianic law, three of his books on civil law, and his discourses on legal history. Godefroy's criticisms of civilian texts and other legal works retained their importance and influence long after his death.<sup>5</sup> The books Godefroy recommended in his "Bibliotheca" had informed his own research projects and he owned many of the books he mentioned in his "Bibliotheca" in his own library.<sup>6</sup>

Godefroy took a humanistic approach to scholarship by studying legal texts in their original languages and contexts. Humanism, the idea of being

<sup>3</sup> M.H. Hoeflich, "A Seventeenth Century Roman Law Bibliography: Jacques Godefroy and His 'Bibliotheca juris civilis Romani'", *Law Library Journal* 75 (1982), 514–28 at 518.

<sup>4</sup> The author is misidentified in the manuscript as "Gothofredi (Dion:)". This is Denis Godefroy, father of Jacques.

<sup>5</sup> Hoeflich, "Seventeenth Century Roman Law Bibliography", 517–18.

<sup>6</sup> Ibid. 526.

educated in subjects beyond the studies needed to pursue professions, was an innovation of the European Renaissance. Fifteenth-century Italian universities developed a programme of education around the “teacher of the *studia humanitatis*, who based his course...on grammar and rhetoric, poetry and history, and the ethical writings of classical Antiquity”.<sup>7</sup> The humanist scholar focused his attention on “recovering and reviving ancient knowledge and ancient eloquence, ancient purity of diction and ancient techniques of argument” while studying and translating Greek and Latin texts.<sup>8</sup> This approach was eagerly taken up by some legal scholars who turned their attention to creating new editions of the texts of Roman law that they judged as corrupted by centuries of inadequate scholarship.

A particular set of ancient legal texts had a vast influence on legal history. The Emperor Justinian had ordered the gathering and publication of the laws of his Byzantine Empire – the remaining part of the Roman Empire in the east – in the early sixth century. The result was four works which were designed to clarify and explain the law as it then existed. The *Code* brought together imperial enactments and organised them by chronological order and subject. The *Digest* explained the law using examples from classical jurists. The *Institutes* was a textbook designed for students since the *Digest* was deemed too difficult for beginners. The *Novels* were new imperial laws which were, in contrast to the Latin of the other works, mostly issued in Greek.<sup>9</sup> The collective name for these works, the *Corpus iuris civilis*, was not adopted until the sixteenth century when Denis Godefroy’s edition of 1583 first used it.<sup>10</sup> Justinian’s legal legacy provided an ideal focus for the methodologies favoured by legal humanists.

The most important of the texts that Justinian sponsored was the *Digest*. This part of the *Corpus iuris civilis* was an encyclopaedia of juristic literature that Justinian intended should act as the source of law for his empire.<sup>11</sup> The

<sup>7</sup> J.B. Trapp, “The Humanist Book”, in *The Cambridge History of the Book*, 3: 1400–1557, ed. Lotte Hellinga and J.B. Trapp (Cambridge: CUP, 1999), 285–315 at 285.

<sup>8</sup> Ibid.

<sup>9</sup> Peter Stein, *Roman Law in European History* (Cambridge: CUP, 2009), 33, 35. For an early modern description of Justinian’s legislation, see Jacques Godefroy, *I. Gothofredi Manuale iuris, sev parva juris mysteria: ubi quatuor sequentia continentur. Juris civilis Romani I. Historia. II. Bibliotheca. III. Florilegium sententiarum juris politicarum, & communium notionum, ex corpore Justinianeo desumptarum. IV. Series librorum & titulorum in Digestis & in Codice* (Lugduni Batavorum: Apud Joannem à Gelder, 1676), 31–4.

<sup>10</sup> Ditlev Tamm, *Roman Law and European Legal History* (Copenhagen: DJØF Publishing, 1997), 5; Hoeflich, “Seventeenth Century Roman Law Bibliography”, 516.

<sup>11</sup> Stein, *Roman Law*, 33–4.

*Digest* failed to work in this way but its text survived in an early manuscript, the Florentine *Pandects*, dating from the mid-sixth century.<sup>12</sup> The Florentine *Pandects*, or *Codex Florentinus*, was probably written in Constantinople for government officials. The manuscript may have been in Italy by the ninth century and it had been moving around the Italian peninsula for years as war booty by the time it came to the attention of legal scholars. It was in Pisa by the late eleventh century and was captured by the Florentines in 1406. It has since remained in Florence.<sup>13</sup>

By the fifteenth century, Justinian's codification of the law had acquired a range of commentaries, glosses, and other medieval interpretations. Jurists of the humanistic persuasion believed that these once useful additions strangled the original texts. The approaches of adding explanations and interpretations used by medieval glossators and commentators continued to be used, especially in Italy, but a new way of studying the sources of Roman law developed alongside them. The survival of the Florentine *Pandects* offered a unique opportunity for scholars since they could use it to go directly to a source of Roman law. Godefroy recommended only editions of the *Corpus iuris civilis* created by humanists in his "Bibliotheca".<sup>14</sup> In "Historia, seu progressus Juris Civilis Romani", which precedes the "Bibliotheca" in *Manuale iuris*, Godefroy listed the scholars he admired for their careful study of the Florentine *Pandects*. These humanist scholars from across Europe included Guillaume Budé, Andrea Alciati, Gregor Haloander, Antonio Agustín, Lelio Torelli, Henricus Zoesius, Wigle van Aytta, and Jacques Cujas.<sup>15</sup> Areskine had works by all of these in his library. He even had copies of many of the specific editions of their works that Godefroy recommended in his "Bibliotheca".<sup>16</sup>

Areskine's list also has matches in author, title, publication, and date for works mentioned in Godefroy's bibliography by Antonio Agustín whom Godefroy admired for his accuracy in editing pre-Justinianic legal texts.<sup>17</sup> There also counterparts for works by the civilians François Baudouin and Scipio Gentili. Areskine seems to have substituted alternate versions when the specific

<sup>12</sup> This was partly because Byzantine lawyers spoke Greek, not Latin. Leo the Wise sponsored a Greek translation of Justinian's law, the *Basilica*, in about 900. This later attracted much interest from early modern scholars who read both Greek and Latin and could compare the compilations. Stein, *Roman Law*, 35.

<sup>13</sup> Godefroy, *Manuale iuris*, 38; Stein, *Roman Law*, 43.

<sup>14</sup> Hoeflich, "Seventeenth Century Roman Law Bibliography", 525.

<sup>15</sup> Godefroy, *Manuale iuris*, 40.

<sup>16</sup> It is safe to assume throughout the following discussion that Areskine owned copies of the books mentioned.

<sup>17</sup> Hoeflich, "Seventeenth Century Roman Law Bibliography", 522.

editions recommended in Godefroy's "Bibliotheca" were not available. One example of this is found where Areskine has the Paris edition of 1584 of Agustín's *De legibus et senatusconsultis liber* in place of the recommended Rome edition of 1583. Most of the matches between Godefroy's *Manuale iuris* and Areskine's library come from Godefroy's recommendations for "Justiniane Jurisprudentia: eiusque variae Editiones".<sup>18</sup> Even if he did not acquire every book he described, Areskine certainly shared Godefroy's preference for works which demonstrated a humanist approach to the legal scholarship that Justinian's laws attracted. The presence of these scholarly books in his library shows that Areskine's interests in legal history and legal theory may have gone beyond the works he needed professionally, however, Scottish advocates called on an impressive range of sources when composing their pleadings.

### A Brief Case Study: Areskine's Citations of Books from His Library

Taking a look at just one of the many cases Areskine dealt with professionally in the early eighteenth century and relating it to his library reveals the practical side of his book collection. Areskine's *Information for Appollonius Lampsints, Hieronymus Joseph Boudaen, Johan Steengragt, and Peter van Hoorn, Lords Directors of the Honourable East India Company of Holland, of the Chamber of Zeland, and Mr. William Drummond of Grange* of 24 March 1729 demonstrates his command of a wide variety of legal sources.<sup>19</sup> Areskine's examination of the right to the ownership of goods which survived a shipwreck includes references to civil law and interpretations of it as well as comparing the customary laws of England, the Hanse Towns, Holland, Zeeland, and Scotland.<sup>20</sup> Although he had an academic's interest in law, Areskine primarily used the legal books in his collection as a practitioner of law. Given the closeness in date between his

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<sup>18</sup> Godefroy, *Manuale iuris*, 69–79.

<sup>19</sup> Charles Areskine, *Information for Appollonius Lampsints, Hieronymus Joseph Boudaen, Johan Steengragt, and Peter van Hoorn, Lords Directors of the Honourable East India Company of Holland, of the Chamber of Zeland, and Mr. William Drummond of Grange, their factor, for His Interest, against His Grace Charles Duke of Queensberry and Dover, Vice Admiral of Scotland, for His Interest, and Mr. Alexander Mckenzie, One of the Principal Clerks of the Court of Session, His Deputy* (Edinburgh, 24 March 1729).

<sup>20</sup> Scotland and the Dutch Republic had a strong trading relationship which was strengthened by shared Protestantism and their use of Roman law. See Esther Mijers, "A Natural Partnership?: Scotland and Zeeland in the Early Seventeenth Century", in *Shaping the Stuart World, 1603–1714: The Atlantic Connection*, ed. Allan I. Macinnes and Arthur H. Williamson (Leiden: Brill, 2006), 233–60.

library manuscript and the case, many of the sources Areskine cited were available to him on his library shelves when he prepared this case. These include citations from Bijnkershoek, *De Lege Rhodia de Jactu*,<sup>21</sup> Coke, *Reports*; Crusius, *Opuscula varia politico-juridico-historica*; Curicke, *Jus maritimum Hanseaticum*,<sup>22</sup> Gibson [Lord Durie], *Decisions*; Godefroy (ed.), *Codex Theodosianus*; Graef, *Syntagma juris publici*; Groenewegen van der Made, *Tractatus de legibus abrogatis*; Grotius (various editions); Leeuwen, *Censura forensis theoretico-practica*; Livy, *Historiae Romanae*; Loccenius, *De iure maritimo & navalii libri tres*; Louis XIV, *Ordonnance de la marine, du mois d'Aoust 1681*; Mackenzie, *Observations on the Acts of Parliament*; Nisbet, *Some Doubts & Questions*; Peck, *Opera omnia*; Skene, *Regiam Majestatem*; Stair, *Institutions*; Welwood, *Abridgement of all Sea-Lawes*; Vinnius, *Institutionum sive Elementorum libri quatuor*; Vinnius, "Notes on Peckius"; Voet, J., *Commentarius ad Pandectas*; and Voet, P., *In quatuor libros Institutionum imperialium commentarius. Information for the East India Company of Holland*, therefore, provides evidence for Areskine's use of his private library of books for reference in his legal practice and it demonstrates the usefulness of his collection for him as lawyer. These books came from different times, places, and legal traditions but they were all relevant for Areskine and his colleagues as he developed his case in Scotland in 1729.

### Other Catalogues and Buying Aids in Areskine's Manuscript

Areskine only listed a few catalogues and buying aids in his manuscript. Given the size of his collection, he doubtless would have had access to many more. Potential buyers could easily obtain book sale catalogues. These could, for example, be attached to other purchases. One example of this can be found in the Advocates Library. Alva Coll., 22, which contains the bookplate of Areskine's son James Erskine, is a collection of reports on equity cases which was published in London in 1741. Bound in at its back is a catalogue for "Law Books publish'd since the Year 1700, sold cheap by J. WORRALL, at the Dove in Bell-Yard near Lincoln's Inn". Areskine listed the fourth edition of 1738 of Worrall's catalogue as a separate publication in his library list. This catalogue includes books which appear in the 1731 manuscript including "Blount's Law Dictionary", "D'Anvers Abridgment", "Treatise of Feme Coverts: Or, Ladies Law", and

<sup>21</sup> The work dealt specifically with jettison. See Henry Flanders, *A Treatise on Maritime Law* (Boston: Little, Brown, 1852; repr. Union, NJ: Lawbook Exchange, 2001), 5.

<sup>22</sup> Areskine had two copies of an edition of 1667. The Hanse Towns had compiled their maritime law in 1591 and this collection was enlarged and corrected in 1614. *Ibid.* 23.

included the prices a buyer could expect to pay.<sup>23</sup> The fifth edition of 1740, also with James Erskine's bookplate, is in the NLS at Alva.377. Worrall took care to establish that he had greater bibliographic integrity than his rivals by saying, "I took my Account from the Books themselves" and the "Observations I have made are True".<sup>24</sup> Worrall published his updated stock list regularly. His shop "in Bell Yard near Lincoln's Inn" attracted customers from about 1736 until 1763.<sup>25</sup> Areskine's library contained selections produced by Worrall and his partners.

The title page of the bookseller John Walthoe's *A Catalogue of the Common and Statute Law-books of this Realm* of 1722 proclaimed that it included information about the "best editions, and Common Prices for which they are now Sold". Walthoe was a notable printer of and dealer in law books in London with shops near Lincoln's Inn and Middle Temple from the late seventeenth century until 1733.<sup>26</sup> Areskine owned at least ten titles on English law which were sold by the Walthoe firm so he may have used their catalogues to make his purchases when he was in London.

Although not a catalogue, Georg Matthias Koenig's *Bibliotheca vetus et nova* of 1678 offered information about publications on a variety of subjects including law.<sup>27</sup> The *Bibliotheca*'s alphabetical arrangement by author made it easy to use. More information was available ranging from basic lists of publications to brief biographies. The most recently published books included the place and date of publication. An example of this is at the entry for Richard Cumberland for whom the only information is that his "librum de legibus naturae" was

<sup>23</sup> John Worrall, *Bibliotheca legum: or, A New and Compleat List of All the Common and Statute Law Books, of this Realm; From their First Publication, to the Year 1738, under the following Heads, viz. Abridgments. Conveyancing. Courts, and Court-Keeping. Entries, Declarations, &c. Maxims and Grounds of the Law. Miscellanies. Parliamentary Affairs. Reports. Sheriffs. Statutes. Tithes and Laws of the Clergy. Wills, Executors, &c. Giving an Account of their several Editions, Dates and Prices, and wherein they differ. The Fourth Edition* (London: John Worrall, 1738).

<sup>24</sup> Ibid. 4.

<sup>25</sup> James Raven, *The Business of Books: Booksellers and the English Book Trade, 1450–1850* (New Haven; London: Yale University, 2007), 282.

<sup>26</sup> Henry R. Plomer, *A Dictionary of the Printers and Booksellers Who were at Work in England, Scotland and Ireland from 1668 to 1725*, ed. Arundell Esdaile (Oxford: OUP, 1922), 300.

<sup>27</sup> *Bibliotheca vetus et nova: in qua Hebreorum, Chaldaeorum, Syrorum, Arabum, Persarum, Aegyptiorum, Graecorum & Latinorum per universum terrarum orbem scriptorum, theologorum, Jutorum, medicorum, philosophorum, historicorum, geographorum, philologorum, oratorum, poëtarum, &c. patria, aetas, nomina, libri, saepius etiam eruditorum de iis elogia, testimonia & judicia summa fide* (Altdorf, 1678).

published in quarto in London in 1672. Deceased authors tend to have their life dates and some biographical information as well as a list of their works. This *Bibliotheca* would have been a useful source for information about authors and their publications for Areskine as he developed his collection. He could also have turned to his copy of Cornelis à Beughem's *Bibliographia juridica & politica novissima* for more ideas about what books to own.<sup>28</sup>

What is described as "Robinson's History" in Areskine's library list is a collected edition in two volumes of the London bookseller Jacob Robinson's *The History of the Works of the Learned....Containing Impartial Accounts and Accurate Abstracts of the Most Valuable Books Published in Great-Britain and Foreign Parts*. Areskine's catalogue does not include the year that his copy was published. Eighteenth Century Collections Online (ECCO) has a copy giving details of books from Robinson's recommendations and reviews of 1738 and the English Short Title Catalogue (ESTC) lists an edition of 1739. Robinson started his bookselling career in the Strand in 1737 and was active until 1759.<sup>29</sup> His *Works of the Learned* included not only lists of books "Just publish'd by Jacob Robinson, under the Inner-Temple-Gate" for each month but also a collected list for the year and an index to the books reviewed throughout the year.<sup>30</sup> Horace Walpole's *A Catalogue of the Royal and Noble Authors of England, with Lists of their Works* offered comprehensive critical guidance about royal and aristocratic authors which, despite its title, included works by Scottish and Irish authors.<sup>31</sup> Even if he did not have a policy of keeping and recording book catalogues, Areskine had resources in his library that he could use to find out about available and desirable publications. He could have made selections of legal works from Godefroy's "Bibliotheca", consulted the catalogues of London booksellers and continental bibliographers, and studied reviews of the latest works by Robinson and Walpole.

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<sup>28</sup> *Bibliographia juridica & politica novissima: perpetuo continuanda sive conspectus primus catalogi librorum juridicorum, canonicorum, legalium, politico-legalium, ut & politicorum* (Amsterdam, 1680).

<sup>29</sup> Raven, *Business of Books*, 166.

<sup>30</sup> *The History of the Works of the Learned, for the Year One Thousand Seven Hundred and Thirty-Eight. Containing Impartial Accounts and Accurate Abstracts of the Most Valuable Books Published in Great-Britain and Foreign Parts. Interspers'd with Dissertations on Several Curious and Entertaining Subjects, Critical Reflections, and Memoirs of the Most Eminent Writers in all Branches of Polite Literature* (London: Printed for Jacob Robinson, under the Inner-Temple Gate in Fleet-Street, 1739), e.g. 232, 310.

<sup>31</sup> *A Catalogue of the Royal and Noble Authors of England, with Lists of Their Works* (London, 1759).

### *Desiderata? Printers and Publishers Detailed in the 1731 Manuscript*

The Areskine manuscript gives information about printers and publishers for twenty-nine books of the 1,290 books listed. The inclusion of these details may indicate that Areskine or his agents selected these books for the quality of the print or their desirability as collectors' copies as well as for their content. The majority of the list's entries give only the shelf number, title and author details, place of publication, and date. The information about publishers, when it appears, is either in the column which gives the place of publication or it is included as a note as part of the title and author information. The most frequently mentioned are members of the Chouet publishing dynasty of Geneva who appear on seven occasions. They are followed by the Elzeviers of Amsterdam with four mentions and the Estiennes of Geneva with three. The heirs of Filippi de Giunta of Florence are mentioned twice as are the Wechel Presses at Frankfurt and Hanau. The rest of the printers appear with one mention each. They are: Peter van der Aa of Leiden, Aldus of Venice, Alessandro Minuziano of Milan, Jean Lertout of Lyon, Sigmund Feyerabend of Frankfurt, Pierre Des Hayes of Paris, Pierre Le Petit of Paris, Herman Scheus of Rome, David Friedrich Rhete of Gdansk, the heirs of Eustatius Vignon and James Stoer of Geneva, and Johannes van de Water of Utrecht. The only printer identified from the British Isles is William Ged of Edinburgh.

There is no overall subject theme to the books which include these publication details. They range from legal reference books to the collected works of classical authors. Most of the entries which include details about their publishers, however, were books printed by the publishers who were best known for quality printing, specialised typefaces, promotion of humanistic scholarship, or all three. An intriguing aspect of these entries is that many more books in Areskine's list were also created by some of these same publishers and this is especially the case for the Chouets, Elzeviers and various members of Wechel family. That he was interested in obtaining works by publishers such as these places Areskine as a collector who was "interested in the finely printed editions of the classics produced by the scholar-printers of the early sixteenth century" rather than in the incunables fancied by later collectors.<sup>32</sup>

The Chouets of Geneva produced good quality printing and attractive typography at reasonable prices. They published works on Roman and public law for the northern European market while concentrating on canon law and

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<sup>32</sup> Arnold Hunt, "Private Libraries in an Age of Bibliomania", in *The Cambridge History of Libraries in Britain and Ireland*, 2: 1640–1850, ed. Giles Mandelbrote and K.A. Manley (Cambridge: CUP, 2006), 438–58 at 444.

Rota decisions for the southern market.<sup>33</sup> Areskine's Chouet selections included works by François Baudoin, Johannes Calvinus,<sup>34</sup> Jacques Godefroy, Jacobus Labittus, Francisco Mantica, and Alexander Scot. These were, with the exception of Mantica's work on canon law, for the northern market as we might expect for a collection based in protestant Scotland. Areskine had at least eighteen works from their presses in total. The Chouets and other Geneva book producers distributed their products through book sale catalogues and at the Frankfurt and Leipzig book fairs.<sup>35</sup> This practice continued for centuries. Areskine visited the Leipzig Fair as part of his Continental tour in 1710 and it is reasonable to assume that he made some purchases there.<sup>36</sup>

Areskine had a wide selection of books published by the Elzeviers of the Netherlands. This may be because the firm was one of the most prolific of the seventeenth and early eighteenth centuries or it may be that Areskine was seeking out their publications as a collector. Elzevier books were popular with Scottish collectors: they were also present in the Newhailes library assembled by the Dalrymples. A search on the NLS catalogue for "Elzevier" and "Nha" (the Newhailes collection prefix) returns forty-seven records.<sup>37</sup>

Only one British publisher is mentioned by name in Areskine's list. The Edinburgh goldsmith William Ged's invention of stereotype printing in the 1730s promised a revolution in book printing. Ged sought the Faculty of Advocates' patronage by delivering a copy of his stereotyped Sallust of 1739 to them in 1740.<sup>38</sup> This is the book described as "Ged's Salustij Belli Catilinarij et Jugurthini Historiæ" in Areskine's catalogue. This book's imprint proclaimed

<sup>33</sup> Georges Bonnant, "Typographies Genevoises du XVI<sup>e</sup> au XVIII<sup>e</sup> siècle", in *Cinque Siècles d'Imprimerie à Genève, 1478–1978: Pages d'histoire composées, illustrées, imprimées et reliées par des maîtres et compagnons en hommage aux praticiens d'un noble corps de métier*, ed. Beat Weber (Genève: Société Suisse des Maîtres Imprimeurs, 1978), 93–100 at 99.

<sup>34</sup> Johann Kahl (d. 1614), alias Calvinus, professor at the University of Heidelberg. Areskine had two editions of his *Lexicon juridicum* printed by the Chouets in 1645 and 1665.

<sup>35</sup> Georges Bonnant, "La Librairie Genevoise en Allemagne jusqu'à la fin du XVIII<sup>e</sup> siècle", in *Cinque Siècles d'Imprimerie à Genève, 1478–1978: Pages d'histoire composées, illustrées, imprimées et reliées par des maîtres et compagnons en hommage aux praticiens d'un noble corps de métier*, ed. Beat Weber (Genève: Société Suisse des Maîtres Imprimeurs, 1978), 131–66 at 142.

<sup>36</sup> John H. Appleby and Andrew Cunningham, "Robert Erskine and Archibald Pitcairne – Two Scottish Physicians" Outstanding Libraries', *Bibliotheca*, 11 (1982), 3–16 at 14. Heinrich Von Huyssen wrote to his fellow advisor to Peter the Great, Robert Areskine mentioning that he had met his brother at the Leipzig Fair.

<sup>37</sup> <[www.nls.uk](http://www.nls.uk)> accessed 3 Sept. 2011. I am grateful to Brian Hillyard for this comparison.

<sup>38</sup> John Burnett, "Ged, William (1684/5–1749)", *ODNB* (Oxford: Oxford OUP, 2004) <<http://www.oxforddnb.com/view/article/10484>> accessed 8 Nov. 2010.

that it had been produced “non typis mobilibus, sed tabellis seu laminis fusis”, which is to say by a stereotype process. Areskine would have been aware of the history of this book and its process since he was involved with the administration of the Faculty of Advocates and its Library: he would have known about Ged’s gift to the Faculty.<sup>39</sup> The inclusion of Ged’s name on his list may indicate that Areskine thought that the contemporary Scottish innovation that the book represented was the equal of more traditional printing techniques on the continent or that he appreciated the innovation as someone who was interested in technological advances. Stereotype printing had the potential to revolutionise book printing by making it more efficient and therefore less expensive to produce books.

There is, however, another reason why printers and publishers were mentioned in the manuscript. Areskine’s two volume octavo copy of *Les negotiations de monsieur le President Ieannin* of 1659 gives “chez Pierre le Petit imprimeur & libraire ordinaire du Roy, rue Saint Jacques, à la Croix d’or” as its producer on its title page. There were at least two printers called ‘Pierre Le Petit’ operating in Paris at the time that *Les negotiations de monsieur le President Ieannin* was published in folio in 1656.<sup>40</sup> Areskine’s manuscript duly gives “Chez Pierre La [sic] Petite” as his book’s publisher. What the title page actually says is “Iouxte la Copie de Paris. Chez PIERRE LE PETIT 1659”. The reason Areskine’s list gives the reference to the publisher rather than the place is simply that there is no place of publication on the title page. In this case the reason for the publisher’s appearance in the manuscript is obvious – no other information was available to the cataloguer when he looked at the title page – and this has nothing do with considerations of humanist scholarship, typography, or rarity.

### Buying Books in London and Edinburgh

When they returned home after their academic travels, Scottish book buyers who were interested in law and other books had a range of domestic sources available to them to help them continue to find the books they wanted. The Advocates Library, for example, printed its catalogue in 1692 and again in 1742. These catalogues not only advertised the library’s books to its users but also

<sup>39</sup> For Ged’s relationship with the Faculty of Advocates see Brian Hillyard, “William Ged and the Invention of Stereotype: Another Postscript”, *Library*, 6th ser., 13 (1991), 156–7.

<sup>40</sup> V.F. Goldsmith, *A Short Title Catalogue of French Books, 1601–1700 in the Library of the British Museum* (Folkstone: Dawsons of Pall Mall, 1973), 648.

provided inspiration for legal professionals who wished to create their own collections. Areskine's involvement in the administration of the Advocates Library meant he sat on publication planning committees, took part in library visitations, advised on library policies such as on expanding the physical space, and recommended the purchase of books. In 1719, for example, Areskine was nominated as a library inspector and, in 1723 he was part of a team that negotiated the purchase of books on British history for the Library from James Anderson who had bought them at the auction of the physician Robert Sibbald's library.<sup>41</sup>

Areskine, despite having his own private book collection, certainly used the Advocates Library as a source of books. An undated "List of Books Borrowed from the Advocates Library" kept by librarian Thomas Ruddiman recorded loans made by Areskine. One of the books he borrowed was "Carpzovij Criminalia. fol".<sup>42</sup> Areskine bought his own copy of Benedict Carpzov's *Practicæ novae imperialis Saxonicae rerum criminalium*, now in the Advocates Library and containing his bookplate, on 24 December 1743 for "7sh. 6d": an inscription on the title page records the purchase date and price. He also borrowed Sir George Mackenzie's *Pleadings* in octavo from the Advocates Library. After he had acquired his copy of Mackenzie's *Works*, Areskine would have found this text in the first volume published in 1716. Although he did not list either of the library's printed catalogues in his own catalogue, Areskine would have been very familiar with the Advocates Library and its holdings.

Collectors did not need to make repeated continental visits to develop their libraries since learned books were widely available. Booksellers, aware of this market, travelled to abroad to acquire stock. The Edinburgh bookseller Robert Freebairn regularly visited the Low Countries returning, for example, with "with a parcel of books" in 1702.<sup>43</sup> Some continental sellers also recognised the importance of the British market and expanded their businesses to include shops in London. Some of these sellers concentrated their efforts on scholarly books. An example of this type of seller is provided by David Mortier, a Dutch bookseller, who was established in London by 1698. Although he was based in Holland from 1709 to 1719 when he took over his brother's part of the family

<sup>41</sup> *The Minute Book of the Faculty of Advocates*, 2: 1713–1750, ed. John MacPherson Pinkerton (Edinburgh: Stair Society, 1980), 23, 39, 65, 148–50, 194.

<sup>42</sup> Thomas Ruddiman, "List of Books Borrowed from the Advocates' Library" (n.d.), NLS MS F.R. 260a, f. 3.

<sup>43</sup> Richard Ovenden, "Selling Books in Early Eighteenth-Century Edinburgh: A Case Study", in *The Edinburgh History of the Book in Scotland*, 2: *Enlightenment and Expansion*, ed. Stephen W. Brown and Warren MacDougal (Edinburgh: EUP, 2012), 132–142 at 135.

business, Mortier was back in London by 1720. He printed catalogues from 1702 which featured his selections of used books, new foreign books, and maps and prints. All of his stock was printed or sourced in Holland.<sup>44</sup> Areskine had at least three books from the Mortier concern all of which were published in Amsterdam. He also owned books from other foreign booksellers based in London including the Vaillant brothers and Pierre Gosse. These foreign sellers used their continental connections, which were often family based, to supply books from Holland and France. They managed sales and auctions on both sides of the Channel to supply the books their cosmopolitan clientele desired.<sup>45</sup>

### *London*

Library keepers and agents helped collectors develop their libraries and booksellers also played important roles in the book culture of the early eighteenth century. Wealthy aristocratic British book collectors such as the Harleys, the earl of Sunderland, and the earl of Ilay stimulated the book trade and “tens of thousands of books came into the London market in the early years of the century...for dispersal...by auction or retail catalogue”.<sup>46</sup> One of the booksellers’ most important functions was creating catalogues for their inventories of stock for sale at retail or at auction. Beyond their obvious marketing purposes as advertisements of books on sale, catalogues could be used as sources of availability information for potential buyers.

The London book trade had expanded beyond the confines of St Paul’s Churchyard by the early eighteenth century and different areas of the city came to be associated with different types of books.<sup>47</sup> John Mackay’s popular travel guide, *A Journey through England. In Familiar Letters from a Gentleman Here, to his Friend Abroad* published in London in 1714, described the locations of the

44 Katherine Swift, “Dutch Penetration of the London Market for Books, c. 1690–1730”, in *Le magasin de l'univers: The Dutch Republic as the Centre of the European Book Trade: Papers Presented at the International Colloquium, held at Wassanaar, 5–7 July 1990*, ed. C. Berkvens-Stevelinck and others (Leiden: Brill, 1992), 265–80 at 268–70.

45 Ibid. 270, 277.

46 Christopher Edwards, “Antiquarian Bookselling in Britain in 1725: The Nature of the Evidence”, in *A Genius for Letters: Booksellers and Bookselling from the 16th to the 20th Century*, ed. Robin Myers and Michael Harris (Winchester: St Paul’s Bibliographies; New Castle, DE: Oak Knoll, 1995), 85–102 at 86.

47 Giles Mandelbrote, “Workplaces and Living Spaces: London Book Trade Inventories of the Late Seventeenth Century”, in *The London Book Trade: Typographies of Print in the Metropolis from the Sixteenth Century*, ed. Robin Myers, Michael Harris and Giles Mandelbrote (New Castle, DE: Oak Knoll; London: British Library, 2003), 21–44 at 26.

booksellers of London. Judging by the books that appear in his library list of 1731, Areskine would probably have been particularly interested to know that:

The *BOOKSELLERS* of Antient Books in all Languages are in *Little-Britain* and *Pater-Noster-Row*; those for *Divinity* and *Classicks* on the *North* side of St Paul's Cathedral; *Law, History* and *Plays* about the *Temple-bar*; and the *French-Booksellers* in the *Strand*.<sup>48</sup>

Booksellers, whatever their location and wares, ensured that their sale catalogues were available at book shops and in coffee houses where learned gentlemen met to discuss the latest publications and compare their book desiderata. Areskine regularly visited London from the 1720s to the 1740s as a Westminster MP. He also acted in appeal cases before the House of Lords. He would have had easy access to catalogues and shops. While in London, Areskine would also have spent time with his son Charles who was an English barrister until his death in 1749.

As they had in the Low Countries, auctions proved a popular way to buy and sell books in Britain. The first English book auction had taken place in Cambridge in 1676. In their early days, English book auctions were morning affairs but by the 1730s they could start as late as six pm. Evening sales evolved alongside the new coffeehouses. Coffeehouse book customers found the later sales an entertaining way to spend their evenings while they increased their libraries. They could enjoy all the benefits of coffeehouse society while they shopped.<sup>49</sup> The British book market was divided between publishers and sellers in London and those in the provinces. Areskine was a customer who patronised multiple markets. As we have seen, he picked up books while travelling abroad. When he shopped domestically Areskine would have used booksellers in both London and Edinburgh to acquire his library.

### *Edinburgh*

Edinburgh's lively book market was supported by sales and auctions along its High Street and in Parliament Square. Areskine's townhouse in Mylne's Square was opposite the Tron Kirk just a few minutes' walk from the courts in

48 John Macky, *A Journey through England. In Familiar Letters from a Gentleman Here, to his Friend Abroad* (London: printed by J. Roberts, 1714), 205.

49 Katherine Swift, "Bibliotheca Sunderlandia: The Making of an Eighteenth-Century Library", in *Bibliophily*, ed. Robin Myers and Michael Harris, *Publishing History Occasional History*, 2 (Cambridge: Chadwyck-Healey, 1986), 63–89 at 68.

Parliament Square. He may even have had a printing house in his block: John Moncur operated a printing house in Bull Close, opposite the Tron Kirk in the early eighteenth century.<sup>50</sup> Areskine's house was accessed via Bull's Stairs.<sup>51</sup> He had two books from Moncur's press.<sup>52</sup> As in London, book buying opportunities were frequent and convenient. Parliament Hall acted as a market with "stalls for booksellers" and other merchants.<sup>53</sup>

Scottish book publishing developed differently from the English industry. There was no central regulating body like the Stationers' Company in London and the Scottish publishing industry's organisation was similar to that in the Low Countries. Unlike the English print industry which was almost exclusively centred on London, publishing centres evolved in Aberdeen, Edinburgh, and Glasgow after printing was introduced into Scotland by royal patent in 1507.<sup>54</sup> Legal publishing was present from the start since James IV's patent authorised, among other things, the printing of "bukis of our Lawis" and "actis of parliament".<sup>55</sup> Scottish buyers had their own book market, centred

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<sup>50</sup> Plomer, *Dictionary*, 209.

<sup>51</sup> J. Gilhooley, *A Directory of Edinburgh in 1752* (Edinburgh: EUP, 1988), 18.

<sup>52</sup> Both were law books: Alexander Bruce, *The Decisions of the Lords of Council and Session, in Most Cases of Importance, for the Months of November and December 1714, and January, February, June and July 1715: With an Alphabetical Abridgment, and the Acts of Sederunt Made in that Time* (Edinburgh: John Moncur, 1718) and John Spotswood, *The Form of Process, before the Lords of Council and Session, Observed in Advocations, Ordinary Actions, Suspensions. Shewing also, the Manner of Making Protestations for Remedy in Law, and how Summons thereon was brought before the Parliament of Scotland; and the way how since the Union, such Process is laid before the House of Peers. With The Form of Process before the Lords of Session, as Commissioners appointed by Parliament, for Plantation of Kirks, Valuation and Sale of Tythes. To all which is prefix'd The Present State of the College of Justice, Giving an Account of the Members thereof, and of the Order Observed by the Lords of Session in Judging Causes; with the Fees and Prices of Writs Paid to the several Offices and Members of the Session. Written for the Use of the Students in Spotswood's College of Law* (Edinburgh: John Moncur, 1711).

<sup>53</sup> Angus Stewart, "The Session Papers in the Advocates Library", in *Miscellany Four by Various Authors*, ed. Hector L. MacQueen (Edinburgh: Stair Society, 2003), 199–223 at 202, n. 21.

<sup>54</sup> Jonquil Bevan, "Scotland", in *The Cambridge History of the Book in Britain*, 4: 1557–1695, ed. John Bernard and D.B. Mackenzie (Cambridge: CUP, 2002), 687–700 at 687.

<sup>55</sup> Quoted in Alastair Mann, "Printing and Publishing", in *The Oxford Companion to Scottish History*, ed. Michael Lynch (Oxford: OUP, 2007), 491–3 at 491.

in Edinburgh, with an infrastructure of sellers and publishers before 1707.<sup>56</sup> The early eighteenth century witnessed the arrival of quality printing in Scotland and printers such as James Watson, Robert Freebairn, and Thomas Ruddiman began to export books that had appeal beyond the Scottish market.<sup>57</sup>

Just as their colleagues in London, booksellers in Scotland recognised that their well-travelled customers wanted books from other sources and took pains to import them. The printer and bookseller Robert Freebairn, who had travelled to Leiden to buy books in 1702, was still importing books more than three decades later. He advertised an auction of "A Parcel of Books, Lately imported from *England*, and *Holland*...to be sold...at his Shop below the Trone-Church" on 22 January 1734.<sup>58</sup> Despite this description, the auction included books printed in Edinburgh. The Advocates Library bought more books than any other buyer at Freebairn's sale. Among its purchases was the distinctly non-legal Pliny's *Natural History* (Brescia, 1496).<sup>59</sup> If he was in Edinburgh on this date, it is possible given the proximity of Freebairn's shop to his townhouse, that Areskine might have looked at the stock on offer or attended the auction.

Perhaps because of the close links between the Low Countries and the Scottish book trade and because well-travelled Scottish customers were accustomed to the idea, auctions were extremely popular in Scotland. Book auctions were a well-established practice in Scotland by the early eighteenth century.<sup>60</sup> The earliest surviving Scottish book auction catalogue is dated 1686 and was a

56 John Feather, "The Book Trade and Libraries", in *The Cambridge History of Libraries in Britain and Ireland*, 2: 1640–1850, ed. Giles Mandelbrote and K.A. Manley (Cambridge: CUP, 2006), 301–12 at 303.

57 Alastair Mann, *The Scottish Book Trade, 1500–1700: Print Commerce and Print Control in Early Modern Scotland: An Historiographical Survey of the Early Modern Book in Scotland* (East Linton: Tuckwell, 2000), 208.

58 Robert Freebairn, *A Parcel of Books, Lately Imported from England, and Holland, by Mr. Robert Freebairn, To be Sold by Auction at His Shop below the Trone-Church, upon Tuesday the Twenty Second Day of January, 1734* (Edinburgh, 1733). Freebairn had shops in Parliament Close and then Forrester's Wynd from 1705 to 1737. Plomer, *Dictionary*, 121. Areskine had many products of Freebairn's press in his library.

59 Brian Hillyard, "Thomas Ruddiman and the Advocates' Library, 1728–52", *Library History*, 8 (1990), 137–70 at 164.

60 Murray C.T. Simpson, "'Every One is Sure to Get Something for His Money': A 1712 Book Lottery and Auction in Edinburgh", *Journal of the Edinburgh Bibliographical Society*, 5 (2010), 36–44 at 36.

sale of the Edinburgh bookseller John Reid's stock.<sup>61</sup> Few auction catalogues survive but sales were regularly advertised in newspapers such as *The Scots Courant* and the *Edinburgh Gazette*.<sup>62</sup> The *Edinburgh Evening Courant* also published lists of available "books of Scots law".<sup>63</sup> Booksellers publicised their stock with catalogues of the "curious and valuable books" available at their many shops or auction-shops that lined the High Street or at the High Exchange in Edinburgh. Their customers who had been abroad would have recognised the procedures as well as the opportunity to collect quality books at good prices. In the case of auctioned law libraries, they could take advantage of the chance to augment their collections of foreign legal texts. Evidence found in some of the Alva Collection books shows that Areskine frequented auctions in Edinburgh to acquire his books. One of his books, for example, was previously owned by John Spottiswoode whose books were sold at auction in Edinburgh in 1728. Areskine's copy of Simon van Leeuwen's *Censura forensis theoretico-practica* published in 1678 has the inscription "Ex bibl. apud Spottiswude" on its title page.<sup>64</sup> Areskine had two books from the library of William Forbes which was sold at auction in 1736.<sup>65</sup> Both of the books previously owned by Forbes also contain inscriptions which indicate that he too may have purchased them at an auction. Areskine bought books at the Sir Alexander of Pitmedden sale of 1720 and this is verified by the interleaved clerk's copy of the sale catalogue which survives in the National Library of Scotland as well as the presence of the books he bought in his 1731 list.<sup>66</sup>

61 Ibid. Reid's shop was in Bell's Wynd from 1680 to about 1716. Plomer, *Dictionary*, 250.

62 Simpson, "Every One", 36.

63 See e.g. 1 Nov. 1720 and 7 Nov. 1720 which contain advertisements of "books of Scots law to be sold by William Brown his Shop in the Parliament-Close Edinburgh". Brown's list included books Areskine owned such as Mackenzie's *Institutions*, *Criminals*, and *Observations*, collections of decisions by Gilmour, Gibson, Falconer, and Bruce, Forbes's *Journal of the Session*, *Duty and Power of Justices of the Peace*, and his *On Bills of Exchange*, Spottiswood's *Form of Process*, and Stair's *Institutions*.

64 Spottiswoode's library, as sold at auction, contained nearly 3,000 items. John W. Cairns, "Spottiswoode, John, of that Ilk (1667–1728)", *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/26168>> accessed 14 Sept. 2011.

65 Alexander Kincaid, *A Catalogue of Curious and Valuable Books, Being the Library of the Deceast Mr. William Forbes Younger of Schivas Advocate. Which will be begin to be Sold at Auction, on Tuesday the 21st of December 1736* (Edinburgh: Alexander Kincaid, 1736). The books Areskine purchased are listed on p. 5 of the sale catalogue.

66 NLS MS 3802: Interleaved clerk's copy with buyer's names and prices of *A Catalogue of Valuable Books, in Several Languages and Faculties, viz. Divinity, Law, Medicine, History, Philosophy, Mathematicks, with Several of the Best Editions of the Classicks, a Curious*

### An Edinburgh Book Auction: 11 January 1720

Edinburgh book auctions were advertised in advance and details about their procedures were included in the catalogues that described the lots on offer. So we know that on Monday, 11 January 1720 the Edinburgh bookseller James McEuen and his clerk John Wilson made their way to “the second Story of the first Turnpike below the Head of Blackfriar’s Wynd” because the location of the sale is described on the verso of the title page of the catalogue for the auction of the books of Sir Alexander Seton (or Seaton) of Pitmedden. The seller and his clerk stopped to put up some placards that advertised the auction to guide customers. Wilson readied his ledger to record the sales which would take place that afternoon from 2 pm until 6 pm. He had a copy of the catalogue interleaved with blank pages which he numbered by lot so that he could record the purchaser and price for each book sold. The buyers already knew what they wanted before they arrived since had been able to look at the wares on offer for eight days before the sale and they had catalogues which they had bought from McEuen or other booksellers’ shops or which they had been able to peruse in coffee shops.<sup>67</sup>

The advocate, knight, judge, politician, and Baronet of Nova Scotia, Alexander Seton had died the previous year. Among his publications was a treatise on *Mutilation and Demembra[n]tion* which was published in 1699 as a supplement to Sir George Mackenzie’s *The Law and Customs of Scotland in Matters Criminal*. The works, mostly of criminal law, that Seton cited in this treatise were present in his private library.<sup>68</sup> Seton had an extensive library of legal books – 596 titles were listed in the auction catalogue – but his large book collection as advertised also included theological works (1,302 titles), historical works (697 titles), works on the natural sciences, mathematics, and medicine (290 titles), and miscellanies (194 titles). A total of 3,080 lots were offered at the auction on 11 January. The focus here is only on the “*Libri Juridici*” section of the sale.

Areskine bought ten books at the Pittmedden auction. He was one of forty-six named buyers of law books at the sale. These included twenty-two

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*Collection of Pamphlets and Controversies, & c being the Library which belong’d to Sir Alexander Seaton of Pitmedden, Baronet, Lately Deceased. To be Sold by Way of Auction on Munday the 11. Day of January 1720* (Edinburgh, 1719).

67 Ibid., title page.

68 Douglas J. Cusine, “Sir Alexander of Pitmedden”, in *Miscellany Six by Various Authors*, ed. Hector L. MacQueen (Edinburgh: Stair Society, 2009), 29–44 at 31, 41.

advocates,<sup>69</sup> two judges,<sup>70</sup> one Writer to the Signet,<sup>71</sup> two professors,<sup>72</sup> four booksellers, including McEuen,<sup>73</sup> two institutions (the Advocates Library and the University of Glasgow), two nobles or members of the landed gentry,<sup>74</sup> two purchasers who may have been related to Edinburgh booksellers,<sup>75</sup> and two members of the Seton family.<sup>76</sup>

Among the major buyers at the auction of law books were the Advocates Library and the advocates John Erskine, John Spottiswood, and John Ogilvie.

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69 NLS MS 3802, ff. 23<sup>v</sup>–31<sup>v</sup>. Charles Areskine, William Clerk (1681–1723), John Erskine (1695–1768), Alexander Drummond (or David Drummond), Andrew Fletcher (1692–1766), James Gillon (d. 1749), “James Graham” (there are several advocate candidates), “Mr Grant” (there are several advocate candidates), Alexander Hay (d. 1745), Archibald Inglis (1696–1754), Patrick Leith (d. 1731), John Ross Mackie, Kenneth Mackenzie of Dolphinton, “Mr McKinzie” (there are several advocate candidates), Archibald Murray, Alexander Nairn (or Robert Nairn), “Mr Pringle” (there are several advocate candidates), John Ogilvie, William Scot, John Spottiswood of that Ilk, Archibald Stewart, and Alexander Wedderburn (or Peter Wedderburn). For these and the possible candidates see *The Faculty of Advocates in Scotland with Genealogical Notes*, ed. Francis J. Grant (Edinburgh: Scottish Record Society, 1944).

70 Sir William Calderwood of Polton (Lord Polton) (1660–1733) and Sir James Mackenzie of Royston (Lord Royston) (1671–1744).

71 James Anderson (1662–1728). See *The Society of Writers to His Majesty's Signet: With a List of the Members and Abstracts of the Minutes of the Society, the Commissioners and Council and the Early History of the Scottish Signet* (Edinburgh: EUP, 1936), 61. Anderson was also an author: Areskine had four of his works. Anderson's library was sold in London in 1729. See *Catalogus librorum praestantissimorum in omnibus ferè artibus et scientiis; or, A catalogue of the libraries of...James Anderson...late Post-Master-General of Scotland; and of a celebrated judge and lawyer in England...; likewise a collection of curious books lately imported from Scotland...; which will be sold very cheap, [the lowest price fix'd in each book] on...the 17th of... April, 1729, by Andrew Millar* (1729), ESTC, T61934.

72 Alexander Dunlop (1684–1747), professor of Greek at Glasgow, and Charles Mackie (1688–1770), professor of history at Edinburgh.

73 The others were Thomas Ruddiman who was buying for himself as well as on behalf of the Advocates Library, and the Edinburgh booksellers George Stewart (active 1716–1734) and John Paton (“in the Parliament Close”, 1716–1754). Plomer, *Dictionary*, 233, 281.

74 John, third earl of Kintore (1699–1758). He succeeded to his title in 1718 and would marry, in 1729, Areskine's relative, Mary, daughter of James Erskine, Lord Grange. *The Scots Peerage Founded on Wood's Edition of Sir Robert Douglas's Peerage of Scotland Containing an Historical and Genealogical Account of the Nobility of the Kingdom*, ed. James Balfour Paul, 5 (Edinburgh: David Douglas, 1908), 241. The other was, possibly, William Baird of Auchmedden.

75 Arthur Henderson may have been a relative of the bookseller Alexander Henderson who had a shop in the Luckenbooths from 1692 to 1709. Plomer, *Dictionary*, 152. David Watson may have had a connection with James Watson, printer in Edinburgh who had a shop next door to the Red Lion and opposite the Luckenbooths from 1695 to 1722. Ibid. 303.

76 “Thom. Seaton” and “Capt. Seaton”.

McEuan also featured heavily as a buyer at the auction he was managing since he was fulfilling commissions for out-of-town buyers. Presumably the other book-sellers present also acted in this way for remote clients. Only three lots from the legal books part of sale failed to find buyers: George Adam Struve, *Syntagma juris feudalis* (Jenae, 1669),<sup>77</sup> Struve's *Jus canonicum* (Leipzig, 1688), and Wigle van Aytta [Virgilis Zuichemus], *De testamentis* (Leeuwarden, 1643). Buyers snapped up the rest of Seton's varied collection of texts of civil and canon law, treatises, collected works of continental judges and professors, feudal law, and Scots law.

Seton's books came from across Europe. They range from humanist editions of the *Corpus iuris civilis*, customary law from across the continent, and treatises on specific legal problems. Areskine's ten selections from the sale reveal something of the variety of books on offer. Seven of books he bought on 11 January 1720 are now in the Alva Collections in Edinburgh:

*Folios*

Lot 122, "Corasi (Jo.) Opera omnia per Foresterum, II Voll Wit, 1603"

*Quartos*

Lot 29, "Langlaei, (Ja.) Semestria, Paris 1611"

Lot 31, "Costa (Jo. Bapt.) De congrua in jure rerum partitione. Item, Heser [sic] (Jo.) Loci communes juris practice, Nov. 1677" (now NLS, Alva.116–117(1–2))

Lot 32, "Mattaeus (Ant.) De auctionibus, *Traj.* 1653" (now AL, Alva Coll., 148)

Lot 56, "Regneri (Cypr.) Censura Belgica V. Voll. *Utraj.* 1669" (now NLS, Alva.195–197(1–2))

Lot 109, "Pancirollus (Guid.) De clavis legum Interpretibus, *Ven.* 1655"

Lot 133, "Harprectus (Jo.) Ad Instituta, IV Voll. *Francof.* 1658" (now NLS, Alva.224–225)

*Octavos*

Lot 52, "Barclaius (Gul.) De rebus creditis. Item De jurejurando, *Par* 1605" (now NLS, Alva.317)

Lot 70, "Rittershusius (Geo.) De jure Asylorum, *Argent.* 1624" (now NLS, Alva.258)

Lot 146, "Henryson (Edw.) Adversus Goreanum de Jurisdictione, *Par* 1555"

Lot 166, "Welwood (Will.) Of Sea-Laws, *Ibid.* [London] 1636" (now NLS, Alva.85)<sup>78</sup>

77 Areskine had an edition of 1690 (now NLS, Alva.210).

78 Italics as in original.

Since his purchases came to a total value of more than twenty shillings, Areskine would have been able to claim back the sixpence he paid for the catalogue (if he had bought a copy).<sup>79</sup> All of the books he bought were from the legal section of the sale. Other buyers, such as his cousin John Erskine, seem to have attended all day and made selections from the other parts of the auction. Erskine, for example, bought the only book by Francisco Suárez that sold from the books listed in the theological section, a copy of *De legibus* published in Antwerp in 1613.<sup>80</sup>

### Book Buying Evidence in Correspondence and Accounts

Areskine bought books by correspondence and acted as a subscriber for some of the titles found in his catalogue. Works by John Fordun, John Harvey, Colin Maclaurin, John Major, Robert Monteith, and Nicholas Saunderson were among those he sponsored. It is likely that the copies in his library list were the results of his patronage. Subscription publishing could cross national boundaries. For example, Areskine sent funds to Amsterdam to help fund the publication of Jean Dumont, baron de Carlscoorn's *Corps universel diplomatique du droit des gens* in 1731. We know this because, one William Monro wrote to Areskine to request remittance of the subscription fee:

Sir Please to give the Bearer £2:2<sup>s</sup>:6<sup>d</sup> Sterling as the full Subscription price  
of the 4 last Volums of Corps Diplom. viz the 13.14.15.&16th Volums. the  
Mony being forthwith to be remitted to Holland by Sir Your humble  
Servant W<sup>m</sup>. Monro.<sup>81</sup>

Areskine's 1731 catalogue lists the collection of an established professional man known for his learning and it lacks the titles we might expect to find which relate to subjects from his earlier career as a regent at the University of Edinburgh. By the time the list began to be compiled, Areskine may have passed some of his books from his student and regent years on to his sons who

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<sup>79</sup> Catalogue of Curious and Valuable Books, verso of title page.

<sup>80</sup> NLS MS 3802, f. 7.

<sup>81</sup> William Monro, "Letter" (22 July 1731), NLS MS 5073, f. 176. Dumont had died in 1726 or 1727. The work is attributed to Jean Rousset de Missy with contributions by Jean Barberyac and was published in parts between 1726 and 1731. Michael Bitter, "George Forbes's 'Account of Russia', 1733–1734", *Slavonic and East European Review*, 82 (2004), 886–920 at 893.

were, at least in part, schooled at home before setting out for their own university and professional educations. Such books were certainly later owned by Areskine's son, James, who included them in his own library catalogue of 1774.<sup>82</sup>

James Erskine's account books for 1750 through 1755, although they are incomplete and tell us only very little about his book buying habits, do reveal a close relationship between son and father. The two lent each other money, paid each other's taxes, and made joint purchases of wine. James was a frequent purchaser of prints, stationery, and books and his accounts included entries for an "Irish Grammar & Dictionary",<sup>83</sup> and "To an Engl. Telemachus for Hughy"<sup>84</sup> as N. years gift".<sup>85</sup> In 1753, he recorded in his "Account of Books & c bought" that his "By Yearly Expense for books" had been £15, 17s, 3p. The bulk of this total – £15, 5s, 3p – went "To Kincaid & Donaldson's accott", on 1 June 1753. The rest of the money went to pay for "a ream of papers".<sup>86</sup> The account book does not list the titles of the books that James bought. Alexander Kincaid and Alexander Donaldson ran a business together as printers, stationers, and booksellers in Edinburgh from 1751 until 1758.<sup>87</sup> This was one of the largest book retailing outlets in Edinburgh and the partnership printed new books as well as managing auctions.<sup>88</sup> Areskine's 1731 manuscript lists several collections of statutes printed by them so it is likely that Areskine would have spent a similar amount on account with them as his son did during the 1750s. Duncan Forbes of Culloden similarly kept an account with the Edinburgh bookseller Gavin Hamilton. Forbes purchased Latin works and contemporary titles and used

<sup>82</sup> EUL, MS La.III.755, "Press Catalogue of the Library Belonging to Lord Alva".

<sup>83</sup> James Erskine, "Account Book of James Erskine, Lord Alva, 1750–5", f. 4v. (3 July 1750, 12s).

<sup>84</sup> "Hughy" was Hugh Macquire, Lord Alva's young brother-in-law. Scottish educational theorists thought that the Homeric character Telemachus's adventures provided an entertaining way to educate children about morality. See Henry Hutchison, "An Eighteenth-Century Insight into Religious and Moral Education", *British Journal of Educational Studies*, 24 (1976), 233–41 at 238.

<sup>85</sup> Erskine, "Account book", f. 10v. (7 Jan 1751, 4s, 6p).

<sup>86</sup> Ibid. ff. 68v–69.

<sup>87</sup> *Scottish Book Trade Index*, available at <<http://www.nls.uk/catalogues/resources/sbti/kincaid:lawson.html>> accessed 30 July 2009.

<sup>88</sup> For Kincaid and Donaldson see Richard B. Sher, "Kincaid, Alexander (1710–1777)", *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/65021>> [accessed 30 July 2009] and J.J. Caudle and Richard B. Sher, "Donaldson, Alexander (bap. 1727, d. 1794)", *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/64278>> accessed 30 July 2009.

Hamilton's book binding services.<sup>89</sup> Sir David Dalrymple of Newhailes kept accounts with several booksellers in Edinburgh and London including Paul Vaillant. He also had books imported directly from France.<sup>90</sup>

In addition to the books themselves, booksellers provided services to help book owners manage their growing collections. In 1766, for example, Robert Dundas of Arniston paid the Edinburgh bookseller John Balfour's "Clerk...a Reward for writing fairly the Catalogue of the Library".<sup>91</sup> Booksellers were also commissioned to create posthumous inventories of collections. In 1840, the Edinburgh bookseller Thomas G. Stevenson compiled an inventory of Baron David Hume's collection in compliance with the terms of the Baron's will.<sup>92</sup> Booksellers therefore used their knowledge of books to assist with the administrative tasks associated with book ownership.

### Support for Scottish Book Collectors: Cunningham and Ruddiman

Collectors of all types relied on skilled helpers to purchase, organise, and care for their books. Book buyers needed information about what books were available and to find this out they relied on the support of booksellers and agents. Although collectors might rely on a network of contacts or the services of a private library keeper, by the late seventeenth century a new type of assistant had arrived to help book collectors of all levels. These were "semi-professional bookmen" who made "their living by working as auction agents and valuers, as foreign book-buyers and grand tour guides, as librarians and cataloguers, proof correctors, translators and journalists".<sup>93</sup> Although there is not space here to explore their many roles, the careers of two important Scottish eighteenth-century bookmen demonstrate the varied services they provided for the collectors of the age. Alexander Cunningham of Block (1650/60–1730) and Thomas

<sup>89</sup> George Menary, *The Life and Letters of Duncan Forbes of Culloden: Lord President of the Court of Session, 1685–1747* (London: Alexander Maclehose, 1936), 396.

<sup>90</sup> Robert L. Betteridge, "A Library of Books Shall be the Subject of My Meditations": The Library of the Dalrymples of Newhailes", *Journal of the Edinburgh Bibliographical Society*, 8 (2013), 33–71 at 59.

<sup>91</sup> Pat Wigston, "A Grain of Truth", *Architectural Heritage*, 12 (2001), 13–26 at 24.

<sup>92</sup> David Fate Norton and Mary J. Norton, *The David Hume Library* (Edinburgh: Edinburgh Bibliographical Society; NLS, 1996), 21.

<sup>93</sup> Giles Mandelbrote, "Personal Owners of Books", in *The History of Libraries in Britain and Ireland*, 2: 1640–1850, ed. Giles Mandelbrote and K.A. Manley (Cambridge: CUP, 2006), 173–89 at 188.

Ruddiman (1674–1757) were respected scholars who used their bibliographic skills and contacts to help book collectors.

### *Alexander Cunningham*

One of the most influential agents in the European book market was the Scottish scholar, teacher, and book seller Alexander Cunningham of Block.<sup>94</sup> Cunningham had studied law at Utrecht and maintained links with the Low Countries book trade throughout his life. Acting as an agent for British book buyers was a “lucrative side line” for him and he quickly became known as a bibliophile who had a specialised knowledge of legal texts.<sup>95</sup> Cunningham became an indispensable contact for British book collectors seeking continental books. He worked with Andrew Fletcher of Saltoun (1653–1716) and Lord George Douglas (c. 1667/8?–1693?), for whom he also acted as tutor and grand tour guide, to assemble their libraries.<sup>96</sup> Cunningham also had links with the dukes of Argyll and served as tutor and guide for Lord Lorne, the future second duke in the late 1690s.<sup>97</sup> Areskine’s patron, Archibald Campbell, the future third duke of Argyll, may have accompanied his brother on this educational tour.<sup>98</sup> Colonel Christopher Codrington, who left his library of 12,000 volumes to All Souls College, Oxford in 1710, used Cunningham as his agent when purchasing his collection.<sup>99</sup> Cunningham also had a long association with the earl

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94 John W. Cairns, “Alexander Cunningham’s Proposed Edition of the Digest: An Episode in the History of the Dutch Elegant School of Roman Law (Parts I–II)”, *Tijdschrift voor Rechtsgeschiedenis*, 69 (2001), 81–117, 307–59; John W. Cairns, “Alexander Cunningham, Book Dealer: Scholarship, Patronage, and Politics”, *Journal of the Edinburgh Bibliographical Society*, 15 (2010), 11–35.

95 Swift, “Bibliotheca Sunderlandia”, 72.

96 Ibid. 74–5; Cairns, “Alexander Cunningham’s Proposed Edition”, 99–100; W.A. Kelly, *The Library of Lord George Douglas (ca. 1667/8?–1693?): An Early Donation to the Advocates Library* (Cambridge: LP, 1997), 30, 62; Cairns, “Alexander Cunningham”, 15. For Fletcher’s humanist library, see P.J.M. Willems, *Bibliotheca Fletcheriana: or, The Extraordinary Library of Andrew Fletcher of Saltoun* (Wassenaar: Privately printed, 1999). For Lord George Douglas’ library and his education with Cunningham see W.A. Kelly, “Introduction”, *The Library of Lord George Douglas (ca. 1667/8?–1693?): An Early Donation to the Advocates Library* (Cambridge: LP, 1997), pp. 1–21.

97 Cairns, “Alexander Cunningham’s Proposed Edition”, 104, 106–10.

98 Alexander Murdoch, “Campbell, Archibald, third duke of Argyll (1682–1761)”, *ODNB* (Oxford: OUP, 2004; online edn, Oct. 2006) <<http://www.oxforddnb.com/view/article/4477>> accessed 23 Mar. 2015.

99 Charles Benson, “Libraries in University Towns”, in *The Cambridge History of Libraries in Britain and Ireland*, 2: 1640–1850, ed. Giles Mandelbrote and K.A. Manley (Cambridge: CUP, 2006), 102–21 at 115.

of Sunderland and helped him to collect law books. These were tools for serious legal scholarship and they show the deep knowledge of legal history and theory shared by agent and collector.<sup>100</sup> Although towards the end of his life he spent most of his time at The Hague, Cunningham spent three years in London from 1716 to 1719 during which time he helped the earl of Sunderland with his library.<sup>101</sup>

Cunningham's skill as a tutor and his extensive bibliographic knowledge meant that he was able to establish himself in the closely linked European intellectual scene of the late seventeenth and early eighteenth centuries. His contacts included John Locke, Robert Boyle, Joseph Addison, Gottfried Leibniz, Thomas Burnet, and the librarian and classical scholar Richard Bentley. As he travelled with his students, Cunningham tended to his own scholarship and delivered books to an international network of friends and clients.<sup>102</sup> Cunningham also provided books for institutional clients. The "most learned Civilian" Cunningham provided a catalogue for the Master of the Lincoln's Inn Library in 1708 when its council decided to spend a £50 legacy on "books of the Civil, Canon, and Feudal law".<sup>103</sup> In 1729, he sold forty-two titles to Gavin Hamilton of Edinburgh who was acting on behalf of the Advocates Library.<sup>104</sup>

Although I have not established that they had a personal connection, Cunningham would have been a useful contact for Areskine when he was assembling his library. The two shared an interest in civilian scholarship, a desire to acquire legal texts, and a network of acquaintances. Cunningham, for example, acted as agent for Areskine's future judicial colleague, and fellow Ilay client, Andrew Fletcher, Lord Milton, and acquired law and antiquarian books for him.<sup>105</sup> Fletcher was the nephew of Cunningham's friend the book collector Andrew Fletcher of Saltoun. The younger Fletcher met Cunningham while studying law at Leiden from 1714 to 1716. Cunningham advised Fletcher on courses to take and books to read while he was a student and played a role in

<sup>100</sup> Swift, "Bibliotheca Sunderlandia", 72; Cairns, "Alexander Cunningham's Proposed Edition", 116.

<sup>101</sup> Cairns, "Alexander Cunningham", 19.

<sup>102</sup> Cairns, "Alexander Cunningham's Proposed Edition", 105–06.

<sup>103</sup> *The Records of the Honorable Society of Lincoln's Inn: The Black Books, 3: A.D. 1600 to A.D. 1775* (London: Lincoln's Inn, 1899; facs. edn, Abingdon: Professional Book Supplies, 1991), 234.

<sup>104</sup> Brian Hillyard, "Thomas Ruddiman and the Advocates' Library, 1728–52", *Library History*, 8 (1990), 137–70 at 163.

<sup>105</sup> Katherine Swift, "The Formation of the Library of Charles Spencer, 3rd Earl of Sunderland (1694–1722): A Study in the Antiquarian Book Trade", D. Phil thesis (University of Oxford, 1986), 273.

securing the earl of Sunderland's patronage for his protégé. Books provided a link between Cunningham, Fletcher and their patron. When Fletcher achieved a raise in his salary as Cashier of the Excise with Cunningham's help in 1719, the two sent their patron a gift of two books as a token of thanks.<sup>106</sup> When he became a curator of the Advocates Library in 1719, Fletcher asked Cunningham for advice about law books and Cunningham continued to act as an agent for Fletcher throughout the 1720s.<sup>107</sup>

Cunningham, as an advisor and tutor to Scottish students in the Netherlands, was an important figure in the promotion of the tradition of Dutch "elegant" legal scholarship. John Cairns has pointed out that Areskine's library was, at least partially, a product of this tradition.<sup>108</sup> Areskine's library contained many of the same tools for serious legal humanist scholarship as Cunningham's. These included the Torelli edition of the Florentine *Pandect*, Gregor Haloander's editions of the *Corpus iuris civilis*, and Charles Annibal Fabrot's *Basilikon libri LX*. Part of Cunningham's library was a tool for his research for a new edition of the *Corpus iuris civilis*. The project was left incomplete at Cunningham's death but the contents of his library show the scholarly directions he was taking. He seems to have planned to use a copy of the Torelli edition of the *Florentina* (1553) as the starting point for his corrections to Justinian's *Digest*. To help with this work, Cunningham had a collection of "early printed editions of the *Corpus iuris civilis*".<sup>109</sup> This was in line with Cunningham's other editorial projects: when he decided to edit Virgil and Horace he collected multiple editions of their works.<sup>110</sup> Cunningham was particularly concerned with the meanings of words and with restoring the original meanings of passages of the *Corpus iuris civilis*.<sup>111</sup> In 1717, despite his position as Sunderland's agent and therefore Robert Harley's bitter rival in book collecting endeavours, Cunningham requested and was granted the loan of Harley's Horace of 1477 and an early printed copy of Justinian's *Institutes*.<sup>112</sup> Scholars felt able to cross boundaries to get the resources they needed and expected that the love of learning would transcend other concerns.

Cunningham's extensive library was sold in parts after his death. The first sale took place at Leiden, was made up of 3,246 lots, and lasted eight working

<sup>106</sup> Cairns, "Alexander Cunningham's Proposed Edition", 317, 323.

<sup>107</sup> Cairns, "Alexander Cunningham", 20; Cairns, "Alexander Cunningham's Proposed Edition", 326.

<sup>108</sup> Cairns, "Alexander Cunningham's Proposed Edition", 355–6.

<sup>109</sup> Ibid. 344–5.

<sup>110</sup> Ibid. Areskine owned a copy of Cunningham's 1721 edition of Horace.

<sup>111</sup> Ibid. 345.

<sup>112</sup> Cairns, "Alexander Cunningham", 11.

days from 20 November 1730. This portion of the Cunningham's collection was his law books and his classics. The second portion was of books which his nephew had inherited and which Cunningham had used for his own writings. These were sold in Edinburgh in 1755.<sup>113</sup>

### *Thomas Ruddiman*

The librarian, printer, book collector, and scholar Thomas Ruddiman owed the start of his bibliographical career to the physician Archibald Pitcairne whom he met in 1700 and who encouraged him to leave his position as a private tutor and move to Edinburgh. Pitcairne got Ruddiman work as a copyist at the Advocates Library and by 2 May 1702 Ruddiman was formally employed as an assistant librarian there.<sup>114</sup> Ruddiman acted as the de facto Keeper of the Advocates Library from 1703 to 1729 since the official keepers had little interest in the day-to-day administration of the library. He became Keeper officially on 6 January 1730.<sup>115</sup>

One of Ruddiman's first tasks at the Advocates Library was moving the Faculty's book collection to its new home in the Laigh Hall under Parliament Hall in May 1702. In March 1703, Ruddiman produced a shelf list for the Library's 5,023 books.<sup>116</sup> Ruddiman's responsibilities included ensuring that books owed to the Library under the conditions of the Copyright Act 1710 were delivered and bound and supervising the publication of a new printed edition of the Library's catalogue. The Library's Curators had responsibility for approving book acquisitions but it seems that Ruddiman was able to purchase and add inexpensive books which were related to his own interests, for example, in early printing. Ruddiman mainly followed the Library's remit to acquire books on legal, historical, and antiquarian topics of interest to lawyers.<sup>117</sup>

In addition to his position at the Advocates Library, Ruddiman was a scholar and publisher. He worked as a proof-reader and editor for the bookseller Robert Freebairn who took on his younger brother Walter as an

<sup>113</sup> Swift, "Formation", 278; Cairns, "Alexander Cunningham's Proposed Edition", 339.

<sup>114</sup> Brian Hillyard, "Thomas Ruddiman: Librarian, Publisher, Printer and Collector", in *From Compositors to Collectors: Essays in Book-Trade History*, ed. John Hinks and Matthew Day (New Castle, DE and London: Oak Knoll Press and the British Library, 2012), 83–107 at 83.

<sup>115</sup> Hillyard, "Formation", 42; A.P. Woolrich, "Ruddiman, Thomas (1674–1757)", *ODNB* (Oxford: OUP, Sept. 2004) <<http://www.oxforddnb.com/view/article/24249>> accessed 3 Aug. 2010.

<sup>116</sup> Robert L. Betteridge, "'To Diligence All Things Become Subservient': Thomas Ruddiman's 1703 Catalogue of the Library of the Faculty of Advocates", *Journal of the Edinburgh Bibliographical Society*, 6 (2011), 43–55 at 45–46, 51.

<sup>117</sup> Hillyard, "Thomas Ruddiman", 162–5.

apprentice in 1706.<sup>118</sup> Among the works Ruddiman produced for Freebairn was his controversial edition of George Buchanan's *Opera omnia* of 1715 which made no secret of his Jacobite sympathies: Ruddiman's biographical introduction criticised Buchanan's republican views. Ruddiman himself came under fire from critics and the attacks on him were renewed after the '45 when George Logan (incidentally Alexander Cunningham of Block's nephew) published his treatise on government in 1746. A pamphlet war ensued with Ruddiman printing his defences on his own press.<sup>119</sup> The Ruddiman brothers set up their own printing business in 1712. They specialised in books for schools publishing Ruddiman's own *Rudiments of the Latin Tongue* in a second edition in 1716. Ruddiman "confirmed his reputation as Scotland's foremost Latinist" with his publication of *Grammaticae Latinae institutiones* (1725–1731).<sup>120</sup> He presented a copy of the second volume to the Advocates Library in December 1731.<sup>121</sup> The Ruddimans' printing firm enhanced bibliographical knowledge by publishing a new printed catalogue for the Advocates Library from 1734 to 1747.<sup>122</sup> The Ruddimans were among several Edinburgh printers who published advocates' theses for new members of the Faculty. Ruddiman's reputation as a Latin scholar was acknowledged by Samuel Johnson who remarked upon seeing the errors in his young friend James Boswell's advocate's thesis that "Ruddiman is dead".<sup>123</sup>

The achievements and reputations of Cunningham and Ruddiman show that the "bookmen" who emerged in the late seventeenth century were as well-educated and scholarly as the patrons who employed them. Their contributions to scholarship and to the book market were essential for the book collectors who relied on their knowledge and skills. Although any connection he may have had with Cunningham is unknown, Areskine certainly knew Ruddiman. Areskine became involved with the administration of the Advocates Library almost immediately after his admission as an advocate. He audited the library's accounts, took part in visitations to inspect the library, advised on policies for the library, and was active in committees to determine the value of the Faculty's publishing projects and library expansion plans.<sup>124</sup> An undated

<sup>118</sup> Hillyard, "Thomas Ruddiman" (2012), 87.

<sup>119</sup> Woolrich, "Ruddiman".

<sup>120</sup> Ibid.

<sup>121</sup> Hillyard, "Thomas Ruddiman", 159.

<sup>122</sup> Woolrich, "Ruddiman"; Hillyard, "Thomas Ruddiman", 168.

<sup>123</sup> Hillyard, "Thomas Ruddiman" (2012), 106, 107.

<sup>124</sup> See e.g. *The Minute Book of the Faculty of Advocates, 2: 1713–1750*, ed. John MacPherson Pinkerton (Edinburgh: Stair Society, 1980), 23, 27, 39, 65, 148, 149–50, 151.

notebook kept by Ruddiman records three book loans by Areskine from the Advocates Library.<sup>125</sup> Areskine and Ruddiman, whether or not they compared notes about their own book collecting, were both involved in the activities of the Advocates Library. Both were active participants in Edinburgh's market for books and they certainly attended the same sales and auctions and visited the same shops. Areskine also had at least sixteen books printed by the Ruddiman brothers.

Although they were interested in acquiring books about multiple topics, the primary focus for an advocate's library was books on legal topics. The history of legal publishing is closely linked to the development of law itself. Lawyers actively sought the books they needed to practice their profession and turned to book sellers, agents, and publishers to supply their needs. As the publishing industry flourished, the market for law books grew and reflected new directions in legal thinking in early eighteenth-century Scotland. This was to have profound implications for the development and early scope of the Scottish Enlightenment.

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<sup>125</sup> Thomas Ruddiman, "List of Books Borrowed from the Advocates' Library", NLS MS F.R. 260a.

# Advocates' Books in Early Eighteenth-Century Scotland

## Charles Areskine's Law Books

The legal heritage of many nations and of many centuries came together to form Charles Areskine's library and his books have much to tell us about the development of legal thinking and Scots law in the early eighteenth century. In that sense, the story of Areskine's library began long before he started to collect his books. There is a close relationship between legal learning, law books, lawyers, and the law. As M.H. Hoeflich has pointed out

One cannot understand that history without understanding the intimate connections between law, lawyers, books, and libraries. No one can truly call themselves a legal historian without also acknowledging that they are historians of the book, of publishing, of bookselling, and of libraries. And, thus, we can say that the history of law is also the history of the law book.<sup>1</sup>

This is the starting point for this consideration of some of the legal texts in Areskine's library.

Areskine's library catalogue of 1731 lists 824 titles as "Books", that is, as is clear when examining the list, books on legal topics, while the rest of his collection numbered 489 titles and was described as "miscellaneous". This means that, according to their cataloguer, 63 per cent of the entered titles specifically considered aspects of law. These go beyond the texts needed for legal practice and Areskine's library shows that he took a scholar's approach to his exploration of the history and science of law.<sup>2</sup>

Areskine's library had international scope. His selection included books about the sources and theory of law and some of the books he chose indicated

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<sup>1</sup> M.H. Hoeflich, "Legal History and the History of the Book: Variations on a Theme", *University of Kansas Law Review* 46 (1997–8), 415–31 at 431.

<sup>2</sup> John W. Cairns, "Alexander Cunningham's Proposed Edition of the Digest: An Episode in the History of the Dutch Elegant School of Roman Law (part II)", *Tijdschrift voor Rechtsgeschiedenis*, 69 (2001), 301–59 at 356 and John W. Cairns, "The Origins of the Edinburgh Law School: The Union of 1707 and the Regius Chair", *Edinburgh Law Review*, 11 (2007), 300–48 at 334–39.

his interest in humanist scholarship, especially that of the Dutch “elegant” tradition. His collection also featured a rich selection of books on natural law written by Hugo Grotius and his German followers in particular. Given that Areskine had been a teacher and was appointed as the Regius Professor of the Law of Nature and Nations at the University of Edinburgh before he undertook his professional training, this aspect of his legal book collection is not surprising. Areskine’s selection of books about Scots law included texts that we would now call institutional writings, works about inheritance and land ownership, criminal and maritime law, and the contemporary works of his judicial colleagues. His English law books, meanwhile, show his interest in legal matters south of the border. His library included “forms of process” for Scottish legal practice, works about criminal law, and collections of Scottish, English, and British Acts of Parliament. Areskine used books such as these as his “tools of trade” as his fictitious colleague Paulus Pleydell described the contents of his own working library.<sup>3</sup> Advocates relied on having access to books like these in eighteenth-century legal practice.

Early modern law books “were produced in a bewildering array of types” including commentaries on the *Corpus iuris civilis*, monographs and treatises on specific legal topics, and commentaries on the laws of particular territories.<sup>4</sup> The invention of the printing press widened book distribution and scholarly communication across Europe.<sup>5</sup> However, the arrival of print did not immediately change scholarly practices and the immediate impact of the printing press on the diffusion of knowledge is debatable. Adrian Johns and others have challenged Elizabeth Eisenstein’s central thesis that texts became “fixed” after the arrival of print in her *The Printing Press as an Agent of Change* (1979).<sup>6</sup> Early modern legal texts, especially, were not “fixed”. The circulation of legal materials in manuscript continued well into the hand press era. Moreover,

3 Walter Scott, *Guy Mannering; or, the Astrologer*, 4th edn, 2 (Edinburgh: James Ballantyne, 1817), 290. The lawyer and book collector Andrew Crosbie is thought to be the original for Pleydell. Areskine certainly knew Crosbie: they were related by marriage and Crosbie was one of the ten investors in a cobalt mining project Areskine developed at his estate at Alva. See Stephen Moreton, *Bonanzas and Jacobites: The Story of the Silver Glen* (Edinburgh: National Museums Scotland, 2008), 58. Crosbie also saw Areskine’s will through the probate court. NA, Prob 11/888, f. 139.

4 Alan Watson, *The Making of the Civil Law* (Cambridge, MA; London: Harvard University, 1981), 77.

5 Randall Lesaffer, *European Legal History: A Cultural and Political Perspective*, trans. Jan Ariens (Cambridge: CUP, 2010), 345.

6 Adrian Johns, *The Nature of the Book: Print and Knowledge in the Making* (Chicago; London: University of Chicago, 1998), 10–20.

as Douglas Osler has described, early modern authors of printed legal texts frequently re-issued their works and would "add, cancel or emend" them every "two or three years".<sup>7</sup> The seventeenth-century Scottish advocate Sir George Mackenzie of Rosehaugh was aware of the fluidity of legal publications and recommended that the Advocates Library should acquire not only first editions of works, since he assumed their authors would have played a part in their creation, but also editions published within their authors' lifetimes, the latest editions, and the most notable ones.<sup>8</sup>

For Areskine and the legal practitioners of his age, books were part of a living legal system. Books provided sources of law to support legal arguments. Early modern Scottish advocates submitted their signed pleas in writing.<sup>9</sup> Lawyers' "Petitions", "Answers", "Informations", and "Memorials", that is, the written pleadings presented to the court<sup>10</sup> and collectively known as Session Papers, contained references to such authorities as Justinian's *Digest*, the *lex Rhodia*, and the natural law texts of Grotius and his followers. Written pleadings were produced and amended quickly: printers might work overnight to supply papers in the morning which lawyers would then correct and have re-printed for distribution the same evening.<sup>11</sup> Having a private library for reference would have been a valuable asset for Areskine as a practitioner who needed to work quickly within the Scottish judicial system.

Areskine's library contained books that considered the structure and heritage of the Scottish legal tradition and which defined it. These included texts, later called "institutional works" modelled on Justinian's *Institute* that defined

7 Douglas Osler, "Legal Humanism" <<http://www.rg.mpg.de/en/forschung/osler-legal-humanism/>> accessed 10 Sept. 2011.

8 George Mackenzie, "Oratio inauguralis", in *Oratio inauguralis in apienda jurisconsultorum bibliotheca*, trans. James H. Loudon (Edinburgh: Butterworths, 1989), 46–86 at 74–75.

9 John Spottiswood, *The Form of Process before the Lords of Council and Session* (Edinburgh: John Moncur, 1711), pp. xl–lxi. It is important to note that advocates did not necessarily write the pleadings they subscribed: there was no requirement for them to do so and they could recruit others to do the writing for them. See John Finlay, *The Community of the College of Justice* (Edinburgh: EUP, 2012), 135–36. This practice does not discount the need for and use of private law libraries since the drafter of the documents could be given access to the senior advocate's books and instructions about where to find the necessary citations.

10 For descriptions of the different types of written pleadings, see John A. Inglis, "Eighteenth Century Pleading", *Juridical Review*, 19 (1907–1908), 42–57 and Angus Stewart, "The Session Papers in the Advocates Library", in *Miscellany Four by Various Authors*, ed. Hector L. MacQueen (Edinburgh: Stair Society, 2003), 199–223 at 201–02.

11 John Finlay, "The Lower Branch of the Legal Profession in Early Modern Scotland", *Edinburgh Law Review*, 11 (2007), 31–61 at 41.

Scots law as it existed. Three of the most important of these works were published during Areskine's lifetime, and these reinforced the conventions that developed Scots law into a mixed legal system that combined civilian learning, continental law, local custom, and English common law.

### Early Modern Law Books

The law as set down by the Emperor Justinian in the early sixth century and then preserved in the books of the *Corpus iuris civilis* was only one of many sources of law in the early modern period. Laws regulating international trade, property ownership and inheritance, and criminal matters developed to address regional concerns.

Jurists worked to establish the interrelationships between the *ius commune*, the civilian tradition, and their local customary laws across early modern Europe. Klaus Luig has described the development of written forms of law as a four stage process. First, the study of Roman law throughout the middle ages provided the basis of the *ius commune* of Europe. A second stage saw jurists working to reconcile differences between Roman law and their local law. Local statutes and customs were blended with Roman law to create relevant systems. In the third stage “particular legal systems were commented upon and described separately from the *ius commune*”. The fourth stage saw the emergence of national legal systems as objects of study in their own right. Roman law was by then “no longer the central topic of European legal science” and Latin was replaced by works in vernacular languages as jurists discussed “the indigenous legal sources of statutory law and decisions of the courts”.<sup>12</sup> All of this activity relied on and ensured a steady supply of book publication.

Luig explains that the “four stages of the reception and assimilation of Roman law and the development of national legal systems did not occur in a straightforward chronological order” and the legal literature of the four stages existed concurrently.<sup>13</sup> Roman law remained as an international focus of study and works about it were “frequently reprinted in almost all European countries”.<sup>14</sup> Manlio Bellomo agrees and emphasises that “the various movements – legal humanism, Italian Bartolism, ‘practical jurisprudence’, German *Usus Modernus Pandectarum*, the ‘Seconda Scholastica’ – were all

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<sup>12</sup> Klaus Luig, “The Institutes of National Law in the Seventeenth and Eighteenth Centuries”, *Juridical Review*, new ser., 17 (1972), 193–226 at 194–95.

<sup>13</sup> Ibid. 197–98.

<sup>14</sup> Ibid.

European in scope and were present everywhere".<sup>15</sup> Natural law joined Roman law as another "international aspect of legal science...as practiced in the system of Grotius and particularly in Pufendorf's compendium *De officio hominis et civis*".<sup>16</sup> Pufendorf's work became "the standard text-book of moral philosophy at the beginning of the eighteenth century" in Scotland.<sup>17</sup> For Scottish lawyers and for those across Europe and especially in France, Venice and Naples, "the point at issue in the construction of a national legal system was to bring together all indigenous legal rules in to a body of theory and at the same time to include the received rules of Roman law".<sup>18</sup>

By the late seventeenth century the Scottish jurists James Dalrymple, Viscount Stair and Sir George Mackenzie of Rosehaugh were both able to consider Scots law as an "intelligible system".<sup>19</sup> The aftermath of the "Glorious" Revolution of 1688–89 encouraged these Scottish legal theorists to use natural law ideas to justify the new political order,<sup>20</sup> and this was the context within which Scots law, both criminal and civil, was organised and explained by Stair and Mackenzie in their influential works.<sup>21</sup> Mackenzie and most of his contemporaries relied on the authority of Roman civil law to resolve any uncertainties in legal practice. Stair, however, preferred customary law which he placed in the context of Grotian natural law. In practice both traditions were used and, by 1700, Scots law was a blend of Roman law and local custom.<sup>22</sup> Even after the Union of 1707, Scots law had more in common with Continental traditions than it did with English practice. This was based on a reliance on Roman law but also with a perceived need to give Scots law a modern systematic

<sup>15</sup> Manlio Bellomo, *The Common Legal Past of Europe, 1000–1800*, tr. Lydia G. Cochrane (Washington, DC: Catholic University of America, 1995), 224.

<sup>16</sup> Luig, "Institutes", 198. Pufendorf's compendium was published in more than 150 editions between 1673 and 1964. Klaus Luig, "Zerbreitung des naturrechts in Europa", *Tijdschrift voor Rechtsgeschiedenis*, 40 (1972), 540–57 at 546.

<sup>17</sup> Peter Stein, "From Pufendorf to Adam Smith, the Natural Law Tradition in Scotland", in *The Character and Influence of Roman Law: Historical Essays* (London: Hambleton, 1988), 381–93 at 381. Areskine had two copies.

<sup>18</sup> Luig, "Institutes", 201.

<sup>19</sup> John W. Cairns, "The Formation of the Scottish Legal Mind in the Eighteenth Century: Themes of Humanism and Enlightenment in the Admission of Advocates", in *The Legal Mind: Essays for Tony Honoré*, ed. Neil MacCormick and Peter Birks (Oxford: Clarendon, 1986), 253–78 at 262–63.

<sup>20</sup> John W. Cairns, "Attitudes to Codification and the Scottish Science of Legislation, 1600–1830", *Tulane European and Civil Law Forum*, 22 (2007), 1–78 at 31–32.

<sup>21</sup> Jane Rendall, *The Origins of the Scottish Enlightenment, 1707–1776* (London: Macmillan, 1978), 5.

<sup>22</sup> Cairns, "Attitudes", 15, 18, 19–20, 24.

approach exemplified by Stair in his *Institutions of the Law of Scotland* first published in 1681.

Aspiring advocates continued to study and be examined on the texts of the *Corpus iuris civilis*: their use of Roman law had the benefit of allowing Scottish lawyers to see themselves as part of a pan-European legal tradition.<sup>23</sup> Alongside civil law and statute law, the judge-made law of Scotland was recorded in “Practicks” and “Decisions” from the sixteenth century on and this practice generated its own legal literature. By the eighteenth century, ideas from natural philosophy and social theory influenced Scottish lawyers.<sup>24</sup> These new ideas helped Scottish lawyers to defend the separateness of Scots law from English law after the Union of 1707. Scots law developed into a legal system which combined elements of the civil law tradition, feudal law, customary law, and mercantile law.

### Books as Physical Legal Transplants

The vast quantity of texts on all topics produced in the early modern period must have catered for a wide audience of interested buyers since a customer base made up of “a handful of cultivated humanists eager to know that past” could not have sustained the market for them. Legal book buyers in particular were not only comprised of the scholarly academic market but “must have included judges, lawyers, professors, and students, who used that rich legacy of works in their everyday activities and who used them as tools and as a vital part of their present, not their past”.<sup>25</sup> Bellomo points out that “for nearly two centuries, the printing presses worked ceaselessly to print works on the *ius commune*, slowing only in the 1620s or 30s”. Furthermore, “no judge or lawyer of any prominence failed to own in his personal library at least one glossed corpus of civil law and of canon law”.<sup>26</sup>

Early modern book publishers, printers, and investors were keenly aware of the market for legal books and they advertised “more than twice as many law books as medical books at book fairs up to 1620”. They offered a variety of types of legal texts and

[as] well as standard texts and their glosses...entrepreneurial publishers saw to it that the monuments of medieval jurisprudence in various genres

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<sup>23</sup> Ibid. 259–60.

<sup>24</sup> Ibid.

<sup>25</sup> Bellomo, *Common Legal Past*, 216. See also Ian Maclean, *Interpretation and Meaning in the Renaissance: The Case of Law* (Cambridge: CUP, 1992), 30–34.

<sup>26</sup> Bellomo, *Common Legal Past*, 216.

(criminal law, consilia and decisions, specialist books on evidence and interpretation) remained in print. They actively pursued living authors for their writings, especially in the area of practical law, and set about printing them in their own market zones (or reprinting them if they had first been published elsewhere).<sup>27</sup>

Texts were produced not only for students but also teachers and practitioners whose motives were not always purely scholarly. Impressively produced legal folios were decorative as well as informative since “[t]he consultations of practitioners occurred in the studies where, in order to impress their clients, they displayed their imposing reference books...as visible attestations of their learning and competence”.<sup>28</sup>

Areskine's eighteenth-century collection reflected these earlier practices while housing some of the very texts published in the previous century and prized by earlier generations of legal scholars and practitioners. Areskine had a folio edition of what his catalogue described as “Corpus Juris Civilis Glossatum. 6 Vol.” which was produced in Lyon in 1627.<sup>29</sup> This edition featured not only the gloss of the medieval commentator Accursius but also the observations of the later jurists Pierre Brosses, Jacques Cujas, Denis Godefroy, and Antoine Leconte. The volumes were the product of humanist scholarship and carried the influences of both Accursius and of humanist jurists into Areskine's library. Areskine's copy of “Corpus Juris Canonici” of 1624, also in folio, was also produced in Lyon.<sup>30</sup>

Eighteenth-century Scottish advocates needed these older texts was because a book was a physical legal “transplant”.<sup>31</sup> Legal books carried ideas across regions and their readers interpreted them and grafted or wove them into their

<sup>27</sup> Ian Maclean, *Scholarship, Commerce, Religion: The Learned Book in the Age of Confessions, 1560–1630* (Cambridge, MA: Harvard UP, 2012), 64, 65.

<sup>28</sup> Ibid.

<sup>29</sup> *Digestum nouum, seu Pandectarum iuris ciuilis tomus tertius: ex Pandectis Florentinis... Commentarius Accursii, scholiis Contii & Dionysii Gothofredu lucubrationibus ad Accursium illustratus. His accesserunt paratilla Iacobi Cuiacii...Cum remissionibus Petri Brossei* (Lyons, 1627).

<sup>30</sup> *Corpus iuris canonici absolutiss. in III. partes distinctum: quarum prima Decretum Gratiani, emendatum & notis illustratum: Ad exemplar Romanum diligenter recognitum, & tam eius quam antiquorum codicum ope, vbi lacunae erant, redintegratum* (Lugduni: Sumptibus Iacobi Cardon & Petri Cauellat, 1624).

<sup>31</sup> Alan Watson, *Legal History and a Common Law for Europe: Mystery, Reality, Imagination* (Stockholm: Institutet för Rättshistorisk Forskning, 2001), 109. For the historiography and influence of the idea of legal transplants, see John W. Cairns, “Watson, Walton and the

own legal systems as these developed across Europe throughout the early modern era. Douglas Osler has suggested that geography and religious difference could prevent books from travelling to different parts of Europe<sup>32</sup> but Scottish legal scholars enjoyed good access to the continent and to thriving book markets there and in Britain. They were able to import their books and the ideas that they contained from a variety of sources. Areskine's library was his collection of texts that he found useful as sources for his study and practice of law. Although most came from the protestant north of Europe, Areskine also owned books from the Roman Catholic south.

Alan Watson has observed that "law that is in writing, hence readily available, is *an* or *the* obvious source for borrowing".<sup>33</sup> Roman-Dutch law was articulated by talented jurists, including Grotius, Huber, and Voet, and this meant that "Dutch sources were very rich and persuasive" both domestically and in other jurisdictions.<sup>34</sup> "Legal development depends on the lawyers' culture", and lawyers "habitually seek authority" to resolve legal issues.<sup>35</sup> In their search for the "best law", lawyers select particular systems as sources of law.<sup>36</sup> Scottish advocates who had completed their legal educations in the Low Countries appreciated the scholarship of Dutch jurists. Their continental educations exposed them to Dutch jurisprudence and their similar legal systems ensured that many of their laws were compatible. The Scottish legal elite had easy access to Dutch law books.<sup>37</sup> But it is also important to note that jurists from across Europe were published or re-printed in the Netherlands.<sup>38</sup> Furthermore, there were very close links between Dutch and German scholarship. Osler, as a result of his bibliographical research, recommends thinking of Roman-Dutch law "as a series of concentric circles" with the first as "the legal system of the province, particularly that of Holland". Osler's model then encompasses three further circles with the second as the law of the "other provinces of the Netherlands", the third as the "wider circle of the whole Germano-Dutch legal

History of Legal Transplants", *Georgia Journal of International and Comparative Law*, 41 (2013), 637–96.

<sup>32</sup> Douglas J. Osler, "The Fantasy Men", *Rechtsgeschichte*, 10 (2007), 169–90 at 181–82.

<sup>33</sup> Alan Watson, *The Evolution of Law* (Oxford: Blackwell, 1985), 95.

<sup>34</sup> Patrick Glen, *On Common Laws* (Oxford: OUP, 2005), 59.

<sup>35</sup> Watson, *Evolution*, 117.

<sup>36</sup> Ibid. 118.

<sup>37</sup> So much so that Dutch law books produced the early modern period and now found in modern collections worldwide often have Scottish provenances. Osler, "Fantasy Men", 182–83.

<sup>38</sup> Douglas J. Osler, "A Survey of the Roman-Dutch Law", in *Iuris historia: liber amicorum Gero Dolezalek*, ed. Vincenzo Colli and Emanuele Conte (Berkeley, CA: Robbins Collection, 2008), 405–22 at 415.

family", and the fourth as "works that might be borrowed or adapted from other European legal families".<sup>39</sup> This is plausible.

Areskine's library included works by major jurists from the Netherlands including Joost van Damhouder, Cornelius van Nieustad, Johan van den Sande, Henricus Zoesius, Arnold Vinnius, Paul Voet, Simon Groenewegen van der Made, Simon van Leeuwen, Ulrick Huber, Johannes Voet, Gerard Noodt, and Cornelius van Bijnkershoek.<sup>40</sup> Dutch jurists were looking at some of the same questions about the relationships between civilian law, customary law, and natural law that Scottish jurists were considering and they were writing books and treatises which showed their awareness of customary law even as their universities concentrated on providing training in Roman law.<sup>41</sup>

While he certainly had and, in the Session Papers he composed for the Scottish Court of Session, cited works by Dutch jurists on his bookshelves, Areskine also had a wide variety of books by German scholars of natural law as well as Scottish collections of decisions and practicks, multiple copies of the *Corpus iuris civilis* with commentaries by an international array of scholars, and collections of French and Italian customary law. Scottish lawyers turned to any available written form of law including the collected customary law of other regions, books on and about the civil law tradition, and even the opinions of classical poets. Some of Areskine's contemporary jurists, notably Bankton who made a study of comparing Scots and English law in his *Institute*, even sought common ground with the English legal tradition. Areskine's library encompassed multiple legal traditions from multiple places and different times.

Some of the books in Areskine's library helped his son to obtain an education in English law. But Areskine had professional and intellectual reasons to be interested in the English legal tradition himself. The Union of Scotland with England in 1707 inspired a renewed Scottish interest in the English legal system north of the border. Some of this was for practical reasons since some Scottish institutions, such as the new Court of the Exchequer, introduced procedures

39 Ibid. 416.

40 For a survey of these, see J.W. Wessels, *History of the Roman-Dutch Law* (Grahamstown, Cape Colony; African Book Co., 1908; repr. with a new introduction by Michael H. Hoeflich, Clark, NJ: Lawbook Exchange, 2005), 201–340.

41 M.L. Hewett, "The Roman Law in Roman-Dutch Law – Weft or Woof?", in *Roman Law at the Crossroads: Papers of the Congress Organized by the Department of Roman Law at the University of Utrecht and the Faculty of the University of Namibia* (Windhoek, 30 June–1 July 1997), ed. J.E. Spruit, W.J. Kamba and M.O. Hinz (Cape Town: Juta, 2000), 53–63 at 57.

from English practice.<sup>42</sup> English legal terminology was also introduced.<sup>43</sup> Scottish lawyers might also practice in London: the House of Lords acted as a final appeal court for civil cases and Areskine frequently appeared there professionally throughout the 1730s and into the early 1740s.<sup>44</sup>

Although the Scottish and English legal systems remained separate after the Union, Scottish lawyers assimilated knowledge of the English legal system's procedures. Furthermore, "interest in English law is...very clear from...sources such as the observations on the law of England inserted systematically in Bankton's *Institute*" in the mid-eighteenth century.<sup>45</sup> Those who wanted to learn about English law, took advantage of the availability of the texts English law students and practitioners used and the lively publishing market that derived from them to create their own collections. In addition to its rich collections of Roman, Roman-Dutch, and books relating to other legal systems, the library Areskine collected also included books about two aspects of law which are particularly relevant to the development of law in eighteenth-century Scotland: natural law and Scots law.

### Natural Law

Areskine's appointment as the first Regius Professor of the Law of Nature and Nations at the University of Edinburgh in 1707 shows the recognition of the importance of natural law in Scotland. Areskine's early eighteenth-century grand tour provided an opportunity for him to study the subject with renowned

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<sup>42</sup> John W. Cairns, "Natural Law, National Laws, Parliaments and Multiple Monarchies: 1707 and Beyond", in *Northern Antiquities and National Identities: Perceptions of Denmark and the North in the Eighteenth Century*, ed. Knud Haakonssen and Henrik Horstbøll (Copenhagen, 2008), 88–112, 322–31 at 97–99.

<sup>43</sup> A.L. Murray, "The Post-Union Court of Exchequer", in *Miscellany Five by Various Authors*, ed. Hector L. MacQueen (Edinburgh: Stair Society, 2006), 103–32 at 108–10.

<sup>44</sup> Cairns, "Attitudes", 29. For House of Lords appeals see John Finlay, "Scots Lawyers and House of Lords Appeals in Eighteenth-Century Britain", *Journal of Legal History*, 32 (2011), 249–77. Areskine may have combined his House of Lords appeals activity with his duties as an MP in London. He does not seem to have been involved in any appeals cases after 1741: he lost his Westminster seat in March 1742. For cases in which Areskine participated see John Craigie, John Shaw Stewart, and Thomas S. Paton, *Reports on Cases Decided in the House of Lords, Upon Appeal from Scotland from 1726 to 1757* (Edinburgh: T. & T. Clark, 1849).

<sup>45</sup> William M. Gordon, *Roman Law, Scots Law and Legal History: Selected Essays* (Edinburgh: EUP, 2007), 315.

Dutch professors and to buy continental books on the subject. Secular natural law theories had developed throughout the seventeenth century and their ideas took root across Europe. These had a special resonance in a Scotland where the role of law was being carefully considered in the light of changing sovereigns and religious conflict. Natural law was also closely studied by English lawyers who used it as a source of law.<sup>46</sup> It is worth recalling that Areskine held his academic position at the University of Edinburgh officially until 1734: he may not have taught the subject but the books in his library give evidence that he maintained a scholar's interest in natural law. Scottish jurists received natural law ideas in a variety of ways.

Continental theorists such as Hugo Grotius and Samuel Pufendorf "built a system of law upon what were seen as evident and obvious facts of nature".<sup>47</sup> This had appeal in Scotland and by the time he came to publish his *Institutions of the Law of Scotland*, Stair was able to ally himself with the "learnedest Lawers, who have thought it both feasible and fit, that the Law should be formed as a Rational Discipline".<sup>48</sup> Stair, as Areskine later did, had taught the Scottish arts curriculum as a regent. His interest in natural sciences was sincere. While in exile in Leiden in 1686, he published *Physiologia nova experimentalis in qua, generales notiones Aristotelis, Epicuri, & Cartesii supplentur*.<sup>49</sup> Considering the links between the natural sciences and law doubtless also had appeal for Areskine given his teaching of natural philosophy at the university and his encouraging of his students to discuss the theories of Descartes, Leibniz, and Newton as a regent in the early eighteenth century.<sup>50</sup>

Given Areskine's professorial appointment, the law of nature and nations is an area of legal study which is unsurprisingly well-represented in his library. Areskine's selection of books on the topic encompasses a wide variety of writings on natural law including books which incorporate aspects of natural law thinking. His 1731 list includes Alberico Gentili's *De iure belli, libri III* and writers

46 D.J. Ibbetson, "Natural Law and Common Law", *Edinburgh Law Review*, 5 (2001), 4–20 at 10.

47 Rendall, *Origins*, 24.

48 Stair, James Dalrymple, Viscount of, *The Institutions of the Law of Scotland, Deduced from its Originals, and Collated with Civil, Canon, and Feudal-laws; and with the Customs of Neighbouring Nations: The First Part* (Edinburgh: Printed by the heir of Andrew Anderson, 1681), 14.

49 Roger L. Emerson, *Essays on David Hume, Medical Men and the Scottish Enlightenment: Industry, Knowledge and Humanity* (Farnham: Ashgate, 2009), 8.

50 Charles Areskine, *Theses philosophicae, quas, auspice summo numine, generosi aliquot & ingenui juvenes universitatis Jacobi Regis Edinburgenae alumni, hac vice cum laurea emitendi, eruditorum examini subjicient, ad 12. diem Maii, H. Lq. S.* (Edinburgh: Andreae Symson, 1704).

from the Spanish natural law tradition, who influenced Grotius, such as Antonio Agustín, Diego Covarrubias, Francisco Suàrez, and Francisco de Vitoria.<sup>51</sup> This implies that Areskine was interested how natural law theory had developed before Grotius.

Hugo Grotius's *De jure belli ac pacis*, usually seen as inaugurating the tradition of secular natural law, was originally published in 1625. It was printed in twenty-six Latin editions by 1700 and was also translated into Dutch (by 1626), English (by 1654), French (by 1687), and German (by 1707).<sup>52</sup> Areskine had ten copies of this key work.<sup>53</sup> His interest in Grotian texts may also reveal his book collector's instinct since he acquired early editions published in Paris in 1625 and in Frankfurt in 1626.<sup>54</sup> Areskine's editions of Grotius included French translations by Antoine de Courtin<sup>55</sup> and the very influential one by Jean Barbeyrac of 1734.<sup>56</sup> *De jure belli ac pacis* inspired a range of commentaries, textbooks, and critiques by authors from across Europe. Areskine also collected these. The editions with commentaries that Areskine owned included one with the author's notes and others with the observations of Joannes Fredericus Gronovius, Johann Heinrich Boecler, Johann von Felden, and Kaspar Ziegler.<sup>57</sup> Areskine's textbooks based on Grotius included versions by

<sup>51</sup> For these see Karen Grudzien Baston, "The Library of Charles Areskine (1680–1763): Scottish Lawyers and Book Collecting, 1700–1760", PhD. diss. (University of Edinburgh, 2012), appx A, available at <https://www.era.lib.ed.ac.uk/bitstream/1842/6417/3/Baston Appendicies.pdf>. Henceforth Baston, appx A.

<sup>52</sup> Watson, *Making*, 92.

<sup>53</sup> For these see Baston, "Library of Charles Areskine", appx A.

<sup>54</sup> Areskine's list also includes Grotius' history, *Annales et historiae de rebus Belgicis* (Amstelodami: Ex typ. J. Blaeu, 1658) and its translation into English by Thomas Manley, *Hugo Grotius, De rebus belgicis: or, The Annals, and History of the Low-Country-Wars. Wherein is Manifested, that the United Netherlands, are Indebted for the Glory of their Conquests, to the valour of the English; under whose Protection the Poor Distressed States, have Exalted themselves to the Title of the High and Mighty. Faithfully rendered into English, by T.M. of the Middle-Temple* (London: Printed for Henry Twyford in Vine-Court Middle-Temple; and Robert Paulet at the Bible in Chancery-Lane, 1665) as well as the collection of Grotius' poetry edited by his brother, *Hugonis grotii Poemata, collecta et magnam partem nunc primum edita a fratre Gulielmo Grotio* (Lugd. Batav.: Apud A. Clouquium, 1637).

<sup>55</sup> *Le droit de la guerre et de la paix* (La Haye: A. Moetjens, 1703).

<sup>56</sup> Areskine's copy survives as NLS, Alva.373–374 and both volumes contain his son James's bookplate. *Le droit de la nature et des gens, ou, Système général des principes les plus importants de la morale, de la jurisprudence et de la politique traduit...par Jean Barbeyrac...avec des notes du traducteur & une préface...* (Amsterdam, 1734).

<sup>57</sup> For these see Baston, "Library of Charles Areskine", appx A.

Johann Georg von Kulpis<sup>58</sup> and William Scott's edition specifically published for Scottish students studying at Edinburgh.<sup>59</sup>

Samuel von Pufendorf (1632–1694) and his followers further developed Grotian natural law as a science.<sup>60</sup> Areskine seems to have collected books by these authors in preference to others who wrote on the topic but followed different lines of thought. Pufendorf's *De jure naturae et gentium*<sup>61</sup> set out his vision of the law of nature by using Stoic philosophy and by emphasising the importance of sociability.<sup>62</sup> Pufendorf clarified his ideas about the sources of law in his *De officio hominis et civis iuxta legem naturalem* where he explicitly divided law from theology.<sup>63</sup> He was also an able historian who turned to both ancient and recent history to develop his theories of law. When he was the official state historian for Sweden, Pufendorf wrote *Commentariorum de rebus Suecicis libri XXVI*. His anonymously published *De statu imperii Germanici* used history to criticise the current relations between the Holy Roman Emperor, the Pope, and the German states.<sup>64</sup> Pufendorf also used his historical knowledge in his legal works: his *De jure naturae et gentium* includes 3,000 citations from 148 ancient writers.<sup>65</sup>

58 *Collegium Grotianum, super iure belli ac pacis anno MDCLXXXII. In Academia Giessensi xv. Exercitationibus primum institutum* (Stutgardiae: Lorberus, 1697).

59 Scott had offered a private class on the law of nature and nations at the University of Edinburgh before 1707. For a discussion of his relationship with Areskine and of the appointment of Areskine as the first Professor of the Law of Nature and Nations and not Scott who became professor of Greek see Cairns, "Origins", 326–29.

60 T.J. Hochstrasser, *Natural Law Theories in the Early Enlightenment* (Cambridge: CUP, 2000), 3.

61 Areskine listed *De jure naturae et gentium. Libri octo* (Amstelædami: Apud J. Wolters, 1704) but his copy has not yet been traced, and *Samuelis Pufendorfi De jure naturae et gentium libri octo: cum annotatis Joannis Nicolai Hertii, jcti.* (Francofurti ad Moenum: Sumptibus Erici Knochii, typis Joannis Philippi Andreeae, 1706) which survives as AL, Alva Coll., 127 and contains his bookplate. Areskine also had an edition of 1744 which is not listed in his catalogue: AL, Alva Coll., 113 contains his bookplate.

62 Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge: CUP, 1996), 41.

63 Ibid. 43, 45. Pufendorf was also widely read in England. Ibbetson, "Natural Law", 5.

64 Michael Seidler, "Natural law and History: Pufendorf's Philosophical Historiography", in *History and the Disciplines: The Reclassification of Knowledge in Early Modern Europe*, ed. Donald R. Kelley (Rochester, NY: University of Rochester, 1997), 203–22 at 206–07. Areskine had two copies of *De statu imperii Germanici*.

65 Ibid. 205. Pufendorf's extensive library contained more than 4,000 historical works in a variety of languages. Ibid. 207–08.

Natural law theorists who followed and developed Pufendorf's ideas included Christian Thomasius, Jacob Gottlieb Heineccius, Joannes Franciscus Buddeus, and Johann Nikolaus Hertius. These authors were Areskine's contemporaries and that he collected their books shows that his library held the latest books about the evolving fields of natural law and legal theory. Thomasius (1655–1728) developed Pufendorf's rational approach to natural law. While teaching at Leipzig, Thomasius offered courses on Grotius's *De jure belli ac pacis* and Pufendorf's *De officio hominis et civis*. He published his lectures as *Institutiones jurisprudentiae divinae* in which he explored the interdependent nature of reason and sociability and challenged the idea that God's law was anything other than mysterious since it is impossible to know of it beyond what was revealed in scripture.<sup>66</sup> Thomasius followed Pufendorf's example of using history to illustrate his arguments. He took a humanist approach to his study of Roman law while considering its relevance to contemporary German law in his *Naevorum jurisprudentiae Romanae antejustinianae libri duo* and he argued that the mingled German and Roman law as found in the *usus modernus* should be separated.<sup>67</sup> Heineccius (1681–1741) was a pupil of Thomasius. Heineccius's textbooks developed Thomasius's idea that Roman law should be studied alongside German customary law.<sup>68</sup> Areskine did not list Heineccius's influential textbook of natural law, *Elementa juris naturae et gentium*, or George Turnbull's translation of it, but he did own the German scholar's humanistic works on Roman jurisprudence.<sup>69</sup>

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66 Hochstrasser, *Natural Law Theories*, 116–18. Areskine's copy, now NLS Alva.333, contains his bookplate: *Christiani Thomasii...Institutionum jurisprudentiae divinae libri tres. In quibus fundamenta juris naturalis secundum hypotheses illustris Pufendorffii...demonstrantur & ab objectionibus dissentientium, potissimum D. Valentini Alberti...liberantur...* (Halae, 1710).

67 Luig, "Institutes", 208. Areskine's copy, now AL, Alva Coll., 123, contains his bookplate: *Naevorum jurisprudentiae Romanae antejustinianae libri duo editi à Christiano Thomsio... Praefatio indicat summam naevorum jurisprudentiae Justinianae & hodiernae Romano-Germanicae. Accesserunt ob similitudinem argumenti i. Disputatio academica de naevis jurisprudentiae Romanae sub regibus ad tempora XII tabb. 2. Programma de causis inutilium doctrinarum in studio jurisprudentiae. 3. Vindiciae corollarii de exiguo Pandectarum usu in foris Germaniae adversus programma Wittebergense* (Lipsiae & Halae: Typis & sumptibus Christophori Salfeldii, 1695). For a study of Thomasius and Roman law see Thomas Ahnert, "Roman Law in Early Enlightenment Germany: The Case of Christian Thomasius' *De aequitate celebrina leges secundae codicis de rescindenda venditione* (1706)", *Ius Commune*, 24 (1997), 152–70.

68 Hochstrasser, *Natural Law Theories*, 143.

69 For the relevance of natural law texts in the Scottish context see Cairns, "Alexander Cunningham's Proposed Edition", 357 and Hochstrasser, *Natural Law Theories*, 16–17, 148.

The natural law theories developed by Pufendorf and his followers were defended in what T.J. Hochstrasser has identified as a series of “histories of morality”. Published between 1680 and 1750, these show how “natural law was progressively refined and revised”.<sup>70</sup> Areskine’s library included works by Buddeus (1667–1729) and Hertius (1651/2–1710) from this tradition. Buddeus, a pupil of Thomasius, defended his teacher’s concepts of natural law and claimed that Thomasius had resolved problems in defining law and morality in Buddeus’s introduction to Philippus Reinhardus Vitriarius’s *Institutiones juris naturae et gentium*, which Areskine owned.<sup>71</sup> Buddeus expanded on these themes in his own *Selecta iuris naturae et gentium*.<sup>72</sup> He also published textbooks on the history of philosophy and law. Areskine had two copies of his *Elementa philosophiae practicae*.<sup>73</sup> Hertius’s “Commentatio de jurisprudentia universalis”, which appeared in the first volume of his *Commentationum atque opusculorum de selectis et rarioribus ex jurisprudentia universali, publica, feudali et Romana*, continued the expression of the school of Pufendorf’s approach to natural law.<sup>74</sup>

Natural law eventually “came to be viewed as a theory of justice” in eighteenth-century Scotland.<sup>75</sup> It overtook Roman law as the main focus of intellectual reflection on law.<sup>76</sup> Scottish moral philosophy came “to be defined in terms of the natural law of Grotius and Pufendorf” in the eighteenth century

<sup>70</sup> Hochstrasser, *Natural Law Theories*, 1.

<sup>71</sup> Now NLS, Alva.262: *Institutiones juris naturae et gentium in usum Serenissimi Principis Christiani Ludovici Marchionis Brandenburgici...ad methodum Hugo Grotii* (Lugd. Batavorum: J. Luchtmans, 1692).

<sup>72</sup> Hochstrasser, *Natural Law Theories*, 38, 150. *Io. Francisci Buddei p.p. selecta iuris naturae et gentium* (Halae Saxonum: Sumptibus Orphanotrophii, 1704). Areskine’s copy has not yet been traced.

<sup>73</sup> *Elementa philosophiae practicae: quibus ethica, iurisprudentia naturalis, iurisprudentia gentium, et politica, tum generalis, tum specialis succincte traduntur; in usum Praelectionum Academicarum edita* (Halae Magdeburgicae: Zeidlerus, 1697). Areskine’s library catalogue includes the note: “N.B. No. 16 and 32 are ye same Book, only different Editions”. Neither of Areskine’s copies has yet been traced.

<sup>74</sup> Hochstrasser, *Natural Law Theories*, 38, 150. Areskine’s copy survives in the AL, Alva Coll., 136a–b. Although missing its third volume, Areskine’s bookplate is in the remaining two. *Joannis Nicolai Hertii, jcti & antecessoris Gisseni, Commentationum atque opusculorum de selectis et rarioribus ex jurisprudentia universali, publica, feudali et Romana, nec non historia Germanica argumentis, tomi tres* (Francofurti ad Moenum: sumptibus Joannis Davidis Zunneri, 1700).

<sup>75</sup> Cairns, “Natural Law”, 108.

<sup>76</sup> Cairns, “Alexander Cunningham’s Proposed Edition”, 357.

and natural law was cited in the courts.<sup>77</sup> The influential Scottish jurist John Erskine continued the tradition of Grotius, Pufendorf, and Stair in his *Principles* and his *Institutes*.<sup>78</sup> By the early eighteenth century, natural law was a transnational force and “was established as the most important form of academic moral philosophy in most of Protestant Europe”<sup>79</sup> Jurists recognised that its theories offered a possible replacement for the *ius commune* since its set of undoubted rules applied to all peoples and nations.

### Scots Law Manuscripts and Books

Scottish jurists had recognised that their legal system was unique long before Montesquieu published *The Spirit of the Laws* in 1748 which Areskine owned in French in a “Nouvelle edition, avec les dernieres corrections & illustrations de l'auteur” published in Edinburgh in 1750.<sup>80</sup> For Montesquieu, the establishment of a universal law was impossible since nations had different climates, religions, employment, manners, and customs.<sup>81</sup> *The Spirit of the Laws* had an “immediate impact in Scotland” where its “ideas were taken up by a group of philosophical thinkers” and, although its “influence took longer to permeate the outlook of the practitioners of Scots law”, “by the end of the century the profession was more conscious than it had been to keep the law in touch with the changing social and economic state of the country”.<sup>82</sup> Henry Home, Lord Kames (1696–1782) and Adam Smith (1723–1790) appreciated and developed Montesquieu’s concept that laws were linked to the stages that societies went through as they developed and used the idea in their own theories.<sup>83</sup> Kames applied an idea of historical states to Montesquieu’s framework in his *Historical*

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77 John W. Cairns, “Hamesucken and the Major Premises in the Libel, 1672–1770: Criminal Law in the Age of Enlightenment”, in *Justice and Crime: Essays in Honour of the Right Honourable the Lord Emslie*, ed. Robert F. Hunter (Edinburgh: T & T Clark, 1993), 138–79 at 171–72.

78 Cairns, “Attitudes”, 36.

79 Haakonssen, *Natural Law*, 61.

80 *De l'esprit des loix...Nouvelle edition, avec les dernieres corrections & illustrations de l'auteur* (Edinbourg: Chez G. Hamilton & J. Balfour, 1750). Areskine’s copy has not yet been traced.

81 Peter Stein, *The Character and Influence of Roman Civil Law: Historical Essays* (London: Hambledon, 1988), 368.

82 Peter Stein, “Law and Society in Eighteenth-Century Scottish Thought”, in *Scotland in the Age of Improvement: Essays in Scottish History in the Eighteenth Century*, ed. N.T. Phillipson and Rosalind Mitchison (Edinburgh: EUP, 1970; repr. 1996), 148–68 at 156.

83 Cairns, ‘Natural Law’, 108.

*Law-Tracts* and Smith combined “the sociology of Montesquieu with the historicism of Kames” in *The Theory of Moral Sentiments*.<sup>84</sup>

Scottish legal literature had been developing since the sixteenth century as judges recorded their activities and thoughts about the cases they presided over and the decisions they made. The Court of Session, founded in 1532, generated “its own case-law, usually described as ‘practick’”.<sup>85</sup> Judges made collections of “Practicks” and decisions which were copied and passed throughout the legal profession in manuscript during the early modern period. Sir James Balfour, Lord Pittendreich (c.1525–1583), for example, between 1574 and 1583, gathered judicial decisions, statutes, and Scottish customary law in his “Practicks”.<sup>86</sup> Areskine had three copies of Balfour’s “Practicks”, two in manuscript and one in the printed edition of 1754.<sup>87</sup> The first printed collection of decisions appeared in the late seventeenth century when Sir James Dalrymple, the future Viscount Stair published *The Decisions of the Lords of Council & Session, in the Most Important Cases Debate before them, with the Acts of Sederunt* in two parts in 1683 and 1687.<sup>88</sup> Stair hoped that future law lords would continue his practice of reporting decisions.<sup>89</sup>

In the early eighteenth-century manuscript “Practicks” and collections of decisions, both retrospective and contemporary, became increasingly available in print. Areskine had old collections of decisions in his library including Sir Robert Spottiswood’s *Practicks of the Laws of Scotland* (1706), Sir Thomas Hope of Craighall’s *Minor Practicks, or, A Treatise of the Scottish Law* (1726),

<sup>84</sup> Stein, *Character*, 371–72. Areskine’s copy of Smith, with his bookplate, is now in the University of Toronto, Thomas Fisher Rare Books Library, B-11 03389. It is not listed in his 1731 catalogue.

<sup>85</sup> Cairns, “Attitudes”, 5. For the establishment and development of the Court of Session, including the legal literature it generated, see A.M. Godfrey, *Civil Justice in Renaissance Scotland: The Origins of a Central Court* (Leiden: Brill, 2009).

<sup>86</sup> John W. Cairns, “Historical Introduction”, in *A History of Private Law in Scotland*, 1: *Introduction and Property*, ed. Kenneth Reid and Reinhard Zimmermann (Oxford: OUP, 2000), 14–184 at 96.

<sup>87</sup> Only about twenty copies of the manuscript in varying versions survive today. Peter G.B. McNeill, “Balfour, Sir James, of Pittendreich (c.1525–1583)”, in *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/1188>> accessed 26 Apr. 2011. Areskine’s copies in manuscript are now in the NLS at MS Adv.22.3.3 and MS Adv.22.3.4. For a full description of these, see Gero Dolezalek, *Scotland under jus commune: Census of Manuscripts of Legal Literature in Scotland, Mainly between 1500 and 1660*, 2 (Edinburgh: Stair Society, 2010), 138–39, 139–45.

<sup>88</sup> Cairns, “Historical Introduction”, 134.

<sup>89</sup> J.D. Ford, *Law and Opinion in Scotland during the Seventeenth Century* (Oxford: Hart Publishing, 2007), 388.

edited by Alexander Bayne, and John Spotsiswood's critical edition of it, *Practical Observations upon Divers Titles of the Law of Scotland* (1734). Areskine also collected contemporary decisions. Early eighteenth-century collections of decisions in Areskine's library included William Forbes's from 1705 to 1713 published in 1714, Alexander Bruce's published from 1714 to 1715 printed by John Moncur in 1720, and Kames' *Remarkable Decisions* of 1716 to 1728 published in 1728.

### *"Institutional" Books*

The natural way of Learning in all Arts in Sciences, to know first, The Terms used in them, and the Principles upon which they are founded, with the Origins of the one and the Reasons of the other. A Collection of these Terms and Principles, is in Law called *Institutions*....<sup>90</sup>

"Institutional" writings were not designed to have any particular authority in Scots law when they were published and, just as Justinian's original *Institute* had been, were often created as teaching aids. However, they came to be seen as a source of Scots law.<sup>91</sup> Areskine's library included all of the works now recognised as institutional in Scotland that were published both before and during his lifetime. Although the "modern canon of institutional writers" varies, the list always includes Craig's *Jus feudale*, Stair's *Institutions*, Bankton's *Institute*, Erskine's *Institute*, and Bell's *Commentaries on the Laws of Scotland*.<sup>92</sup>

Thomas Craig's *Jus feudale* of about 1600 was the "first major analytical work on Scots law".<sup>93</sup> Craig wanted to demonstrate the similarities between feudal law in Scotland and England and, arguably, to synthesise Roman and Scots law.<sup>94</sup> He also acknowledged that Roman law could be used in Scotland as long as it was compatible with reason and the laws of nature.<sup>95</sup> When Andrew MacDowall, later Lord Bankton came to publish the first volume of his *Institute* in 1751, he praised Craig's "excellent Book" as "very much esteemed at home,

90 George Mackenzie, "Epistle Dedicatory", in *The Institutions of the Law of Scotland*, 4th edn (Edinburgh: Printed by James Watson, for John Vallange Book seller, 1706).

91 John W. Cairns, "Institutional Writings in Scotland Reconsidered", *Journal of Legal History*, 4/3 (1983), 76–117 at 106–07, 98.

92 Ibid. 99. Erskine and Bell's works will not be discussed here since their works were published after Areskine's death.

93 Cairns, "Attitudes", 11.

94 Watson, *Legal History*, 109; Ford, *Law and Opinion*, 35–52.

95 Alan Watson, *Legal Transplants: An Approach to Comparative Law* (Edinburgh: Scottish Academic, 1974), 37.

and celebrated abroad" but he thought the text was limited in its scope since "it concerns only feudal subjects, and some particulars incident to them...as they took place in his time". Furthermore, it "was never intended for a complete system of our law".<sup>96</sup>

Stair promoted the use of customary law as found in the decisions of the court in his *Institutions of the Law of Scotland* first published in 1681 and again in a revised edition of 1693.<sup>97</sup> Areskine owned both editions. Stair planned "to give a Description of the Law and Customes of SCOTLAND". Scotland's customary law, according to Stair, was "much borrowed" from civil, canon, and feudal law.<sup>98</sup> Alan Watson describes this admission of legal transplanting as a "frank declaration that in Scotland customary law is often borrowed...from a more developed system that is also accessible in writing".<sup>99</sup> Scottish lawyers therefore chose these sources because they were accessible in written form. According to Watson, the written law selected was "also more elaborated (because it has to provide and answer) and will have the *general* admiration of the lawyers".<sup>100</sup>

George Mackenzie's *Institutions of the Law of Scotland* which Areskine had in editions edited by Alexander Bayne and William Forbes, originally published in 1684, was used as a textbook of Scots law until the 1750s.<sup>101</sup> Bayne particularly liked the book's concise but informative style.<sup>102</sup> Forbes was also among the professors who used Mackenzie's work for his classes until he wrote his own textbook, *The Institutes of the Law of Scotland*.<sup>103</sup> Mackenzie disagreed with Stair on the place of the decisions of the Court of Session as a source of law. John Cairns has noted that for Mackenzie "court decisions were...an unsatisfactory source, often reached corruptly or hastily by ignorant judges"

96 Bankton, Andrew MacDowall, Lord, *An Institute of the Laws of Scotland in Civil Rights: With Observations upon the Agreement or Diversity between them and the Laws of England. In Four Books. After the General Method of the Viscount of Stair's Institutions*, 1 (Edinburgh: Printed by R. Fleming, for A. Kincaid and A. Donaldson, and sold by them and other book-sellers, 1753), p. v.

97 Cairns, "Attitudes", 19.

98 Stair, *Institutions*, 1, 11.

99 Watson, *Evolution*, 92.

100 Ibid. 118.

101 John W. Cairns, "Rhetoric, Language, and Roman Law: Legal Education and Improvement in Eighteenth-Century Scotland", *Law and History Review*, 9 (1991), 31–58 at 33.

102 Ibid. 36.

103 Ibid. 33. Although by no means a student by 1722, Areskine had a copy. The second volume of Areskine's copy, containing his bookplate, survives as NLS, Alva.19. *The Institutes of the Law of Scotland* (Edinburgh: Printed by J. Watson, J. Mosman and Company, and sold by W. Brown, 1722).

while acknowledging that they could sometimes have authority.<sup>104</sup> A better source was, Mackenzie thought, “the Writings of Learned Lawyers who give their Judgement in abstract Cases wherein none are concerned but their own Souls, Reputation and Posterity, which generally tye men to be Just, and who have great Leisure to meditate upon what they transmit to Posterity as Law”.<sup>105</sup> Whether they followed Stair or Mackenzie or even if they did not engage with the theoretical concerns of jurists, Scottish lawyers needed access to books to practice their profession effectively. Either way, lawyers needed access to statute law, collections of decisions, instructions about the procedures of the courts, and learned commentaries on law.

Craig, Stair, and Mackenzie all wrote their influential legal works in the seventeenth century with students in mind. Bankton’s mid-eighteenth-century *Institute* took a new approach since it was written for the use of legal professionals rather than for students. Bankton’s *Institute* referred to earlier writers on Scots law including Stair, Mackenzie, and Forbes and its author described his book as a project to bring Stair’s *Institutions* up to date.<sup>106</sup> This was necessary since new statutes passed since Stair’s second edition of 1693 had changed the law, particularly that of inheritance.<sup>107</sup> The Union of 1707 had also had an impact on Scots law that needed attention and Bankton “subjoined...a kind of parallel between our laws and those of England” since the

Lord Stair had no occasion to observe any thing of this kind, nor was it of great use in his time; but now...there is much intercourse between the subjects of South and North Britain, that it must be of great moment, that the laws of both be generally understood, and their agreement or diversity attended to.<sup>108</sup>

Bankton provided a comprehensive survey of the law of his time and supported this with references to the *Corpus iuris civilis*, the bible, the statutes of Scotland and England, Craig, the medieval Scots manuscript the *Regiam Majestatem*, the Low Countries jurists Voet and Huber, and English authors such as Coke and Bacon throughout his *Institute*. Kames shared Bankton’s enthusiasm for English law and wrote his treatise *Principles of Equity* published in 1760 with the object of unifying the laws of Scotland and England.<sup>109</sup>

<sup>104</sup> Cairns, “Attitudes”, 16.

<sup>105</sup> George Mackenzie, quoted in Cairns, “Attitudes”, 17–18.

<sup>106</sup> Cairns, “Institutional Writings”, 92.

<sup>107</sup> Bankton, *Institute*, p. ix

<sup>108</sup> Ibid.

<sup>109</sup> Cairns, “Institutional Writings”, 101.

It is important to remember that lawyers and judges such as Areskine made legal arguments in the courts while considering particular cases and specific circumstances. Their defining of law and selections of texts to compose their arguments were by-products and not the focus of their professional activities. That is why Mackenzie distrusted practicks and decisions as sources of law and why he preferred the carefully considered reasoning of jurists as written in their commentaries and treatises to the proceedings of the courts. This also explains why Areskine had so many different types of law books in his library. For Areskine and his contemporary Scottish legal practitioners, books were part of a living legal system. They used books to support their legal arguments and to determine what the law actually was. Books were tools for lawyers and the libraries they collected were essential parts of their professional lives. The international educations they had attained and nature of the Scottish legal system allowed lawyers to exploit a wide variety of legal traditions and texts as they practiced. Their ability to explore and fuse ancient and modern legal ideas to use them in practical contexts ensured that they were active participants in and promoters and influencers of the intellectual community that developed in the Edinburgh of the Scottish Enlightenment.

## “Miscellaneous” Books: Charles Areskine’s Polite Learning

More than half of Charles Areskine’s library was taken up by a collection of legal books which he used for the study and practice of law. The rest were “*Libri Miscellanei*” which were listed separately in his library catalogue of 1731. The study of law informed the development of the Scottish Enlightenment but other disciplines also inspired the thoughts and activities of Edinburgh’s intellectual elite. Areskine’s miscellaneous collection shows that he had interests beyond the law: he engaged with and followed the big ideas and cultural concerns of the early eighteenth century. Although he owned books which belong to an eighteenth-century tradition of polite learning, many of Areskine’s “Miscellaneous” texts roughly follow the recommendations for forming an enhanced legal collection that Sir George Mackenzie of Rosehaugh outlined in his inaugural oration of 1689 in celebration of the foundation of the Advocates Library. Mackenzie, a founder of the advocates’ collection in Edinburgh as well as being a prolific scholar and legal professional, nominated “*Historia, Critica, & Rhetorica*” as “*Jurisprudentiae inservientia*” and, therefore, necessary additions for a comprehensive legal collection.<sup>1</sup> Areskine’s library included texts related to all three of these attendant disciplines. Areskine also had Mackenzie’s own works on politics, the Scottish legal system, and criminal law.<sup>2</sup> As if following Mackenzie’s directives, Areskine placed classical authors such as Cicero, Tacitus, and Virgil, histories of various nations, and collections of essays and speeches on his shelves. The divisions in the collection are not always clear and Areskine’s two very basic

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<sup>1</sup> George Mackenzie, *Oratio Inauguralis habita Edenburgi Id. Mar. 1689. A Dom. Georgio Mackenzeo, De structura bibliothecæ purè juridicæ, et hinc De vario in jure scribendi genere* (London, 1689), 24. For a translation see George Mackenzie, “*Oratio inauguralis*” in *Oratio inauguralis in aperienda jurisconsultorum bibliotheca*, trans. James H. Loudon, with notes by John W. Cairns (Edinburgh: Butterworth, 1989), 46–86. For the early development of the library and its collection see Brian Hillyard, “The Formation of the Library, 1682–1729”, in *For the Encouragement of Learning: Scotland’s National Library, 1689–1989*, ed. Patrick Cadell and Ann Matheson (Edinburgh: HMSO, 1989), 23–66.

<sup>2</sup> Mackenzie’s collected works included his “*Oratio inauguralis*” in its first volume. *The Works of that Eminent and Learned Lawyer, Sir George Mackenzie of Rosehaugh, Advocate to King Charles II. and King James VII. With Many Learned Treatises of His, Never before Printed*, 2 vols. (Edinburgh: James Watson, 1716–1722). Areskine kept his copy with his miscellanies.

categories can be quite fluid. What is certain, however, is that Areskine's library went beyond the books he needed to understand and serve the law. If his legal library showed his knowledge of the law, his engagement with legal humanism and continental law, and his abilities as a lawyer, Areskine's miscellaneous books demonstrated his taste, his familiarity with contemporary philosophical ideas and debates, his interest in and involvement with the desire to "improve" his nation via scientific progress, and his engagement with the study of its history.

Books were a key component of the Enlightenment. Although there is no set list of which were "enlightened", the books that typify the Enlightenment addressed a shared set of concerns. Richard B. Sher has summarised these as improvement, that is, the "commitment to bettering the human condition, morally and perhaps spiritually as well as materially"; cosmopolitanism; sympathy with fellow human beings; awareness of humanity's social nature; toleration; liberties of worship, speech, and writing; and intellectualism. The Scottish Enlightenment was especially "dedicated to the proliferation of polite, morally and intellectually edifying literature and learning during the eighteenth century".<sup>3</sup> Well-read *virtuosi* had also dedicated themselves to the study of the natural sciences including chemistry, medicine, and mathematics from the late seventeenth century.<sup>4</sup> A new group of *literati* that emerged in early eighteenth-century Scotland eagerly discussed the literature generated by these various studies as they wrote their own contributions to learned study and debate.

The Edinburgh *literati* came from a variety of backgrounds including the legal profession, the church, and the landed gentry and from this group "an elite emerged who were preoccupied with polite learning".<sup>5</sup> Polite learning had its expression in books and in discussions about them. Areskine's library contained books he could have used to engage with some of the key concerns of the Scottish Enlightenment. These interests include history, religious issues, modernisation, and poetry. The presence of books like these in his collection shows how enlightened ideas spread throughout Edinburgh's elite. They also place him within this elite group intellectually. Areskine's library included works by Dante in the original Italian, scores for operas, and biographies of classical and modern figures.

3 Richard B. Sher, *The Enlightenment and the Book: Scottish Authors and Their Publishers in Eighteenth-Century Britain, Ireland and America* (Chicago; London: University of Chicago Press, 2006), 16, 20.

4 Roger L. Emerson, *Essays on David Hume, Medical Men and the Scottish Enlightenment: "Industry, Knowledge and Humanity"* (Farnham: Ashgate, 2009), 12, 16.

5 Nicholas Phillipson, "Culture and Society in the 18th Century Province: The Case of Edinburgh and the Scottish Enlightenment", in *The University in Society, 2: Europe, Scotland and the United States from the 16th to the 20th Century*, ed. Laurence Stone (Princeton: Princeton University, 1975), 407–48 at 425.

There were works on religious controversy, literary criticism, and natural philosophy. Some of his books about religion were by authors and of the type that cost the unfortunate Edinburgh student Thomas Aikenhead his life when he persisted in quoting them at the close of the seventeenth century. The works of history Areskine that owned considered the legacy of feudalism, addressed the histories of Scotland and other nations, and explored the philosophy of history. These topics and the cultural milieu that they represented were important to participants in eighteenth-century Britain's intellectual world.

This brief survey of some of the books that his catalogue described as miscellanies will demonstrate that Areskine shared the interests of the intellectual elite of the early Scottish Enlightenment. Although there is not space to examine each of the books he owned, several key themes can be identified. Areskine's miscellaneous books provide clues about his interest in contemporary debates about history, religion, modernisation, and poetry.

### An Advocate's Library

In Edinburgh, Areskine had access to an important model for his library. By 1711, the year Areskine became an advocate, John Spotswood reported in his *Form of Process, before the Lords of Council and Session*, that the advocates had developed their shared professional library, the Advocates Library, to such an extent that it was "already the best in North-Britain, & in Process of time, may come to be the best in the Isle...by reason of the Number, & Goodness of the Books, for the *Advocats* bestow yearly very liberally that way, and their Stock...is dayly increasing". Spotswood also noted that the advocates were remaining true to George Mackenzie's 1680s vision of creating a law collection for lawyers and that, although "Men are of different Geniuses" and "the Library may be furnished with the *Best Books* in all Sciences", those "which have a Tendance towards *Knowledge of the Law*" were favoured. Spotswood elaborated on this saying that the

*Advocats* satisfy themselves with few *Books of Divinity*, the Old *Greek and Latin Fathers* of the *Church* excepted, & *Church History*; But all Sorts of *Canon Law Books* are taken in, nor are they fond of the late *Books of Medicine*, or *Philosophy*, except such as are *Ethical*, and are *Illustrations of the Laws of Right Reason*, and of *Nature*, which some of the *Modern Philosophers*, have done to very good purpose.<sup>6</sup>

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<sup>6</sup> John Spotswood, *The Form of Process, Before the Lords of Council and Session, Observed in Advocations, Ordinary Actions, Suspensions* (Edinburgh: Printed by John Moncur, 1711), p. xlvi-xlvii. It is safe to assume that Areskine owned the books mentioned in this chapter.

Individual advocates may have chosen to develop their private libraries along similar lines.<sup>7</sup> Areskine had books which addressed religious concerns or controversies but he seems to have left sermons and guides to Christian life mostly to his wife whose library catalogue also survives.<sup>8</sup> Although he had collections of sacred poetry and sermons, the few religious works in his library probably represent Areskine's personally tolerant attitude rather than any interest in religious controversies. Areskine's bibles, meanwhile, are notable for their variety of languages, their printing formats, and their heritage as humanist and protestant printing projects: he owned a copy of the so-called "Bear's Bible" in Spanish and copies which featured Greek text. His works of church history meanwhile are few and some of these combine their subject with political history: there were six titles in total.

As might be expected for a lawyer, Areskine owned books of canon law or the law of the western church before the Reformation and after the Reformation law of the Roman Catholic Church, in a small selection of reference works. These included Gratian's *Corpus iuris canonici* in an edition of 1618 and Pope Boniface VIII's *Liber Sextus* in an edition of 1624. Areskine's library held discussions and commentaries of canon law by Franciscus Florens, Janus Costa, Jean Cabassut, Johannes Goeddaeus, Daniel Maresius, and Giovanni Paolo Lancellotti. Canon law continued to be used in Scotland after the Reformation in the commissary courts which followed its procedures so Areskine may have had occasion to have awareness of such works in practice.<sup>9</sup>

A work published late in his life on the "history of health", a book promoting the virtues of "Dunse Spaw", and another recommending "sea-voyages" for health represent the extent of Areskine's concern for medical matters.<sup>10</sup>

<sup>7</sup> John W. Cairns, "Historical Introduction", in *A History of Private Law in Scotland, 1: Introduction and Property*, ed. Kenneth Reid and Reinhard Zimmermann (Oxford: OUP, 2000), 14–184 at 141.

<sup>8</sup> NLS MS 5161. For a study of Grisel's library including a transcription of her catalogue see Murray C.T. Simpson, "A Woman's Library in 1729: Grisel Erskine", in *The Edinburgh History of the Book in Scotland, 2: Enlightenment and Expansion, 1707–1800* (Edinburgh: EUP, 2011).

<sup>9</sup> For the use of canon law in Scotland after 1560, see Thomas Green, "Court of the Commissaries of Edinburgh: Consistorial Law and Litigation, 1559–1576", PhD. diss. (University of Edinburgh, 2010) and Thomas M. Green (ed.), *The Consistorial Decisions of the Commissaries of Edinburgh, 1564–1576/7* (Edinburgh: Stair Society, 2014).

<sup>10</sup> James Mackenzie, *The History of Health, and the Art of Preserving It: or, An Account of All that has been Recommended by Physicians and Philosophers, Towards the Preservation of Health, from the Most Remote Antiquity to this Time* (Edinburgh: Printed for William Gordon Bookseller in the Parliament Close, 1760); Francis Home, *An Essay on the Contents and Virtues of Dunse-Spaw. In a Letter to my Lord -----* (Edinburgh: Printed by R. Fleming, for A. Kincaid and A. Donaldson, 1751) and Ebenezer Gilchrist, *The Use of*

It is notable that these works on health all date from later in Areskine's life when his fitness was beginning to cause him concern. His correspondence reveals that he worried that his work as a circuit judge, which required him to travel throughout Scotland regularly, was harming his health.<sup>11</sup> There was only one work on medical jurisprudence in Areskine's library. This is not surprising since compared with other legal topics, publications about medical jurisprudence had a shorter publishing tradition and the topic was a fairly new interest for theorists and practitioners. The book Areskine owned, *Pauli Zacchiae Romani, Totius status ecclesiastici proto-medici generalis quaestionum medico-legalium tomus tres* (Francofurti: Schönwetterus, 1666), was the "first systematic treatise of legal medicine": the first edition was published between 1621 and 1635.<sup>12</sup>

Areskine had copies of modern ethical and philosophical works including John Locke's *Two Treatises of Government*, the earl of Shaftesbury's *Characteristicks of Men, Manners, Opinions, Times*, Leibniz's *Essais de theodicée sur la bonté de Dieu, la liberté de l'homme et l'origine du mal*, and David Hume's *Essays, Moral and Political* of 1741 in his miscellaneous collection of books. Works such as these considered, among other things, the place of the gentleman in society and the manners and morality of the age. Shaftesbury's writings, for example, "made polite culture open to all suitably enquiring minds".<sup>13</sup>

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*Sea Voyages in Medicine* (London: Printed for A. Millar, D. Wilson and T. Durham, in the Strand, 1756).

- 11 He wrote to Hardwicke at least twice in 1753, aged 73, asking to be considered for the vacant office of Lord President citing health concerns as his motivation for seeking promotion: "...if my health was firm I shou'd not have a good towards it – I shou'd chuse rather the Office I have, the Circuits twice in the year, and the almost constant business that attends it, are rather too heavy for me...." BL MS Add.35448, f. 19, Charles Areskine, "Letter" (26 Aug. 1753). Later in the year, he justified his uncharacteristic forwardness after the post went to Lord Arniston saying "I humbly offer as the real Cause, of my presuming to suggest this thing in favour of my Self, Contrary to my behavior hitherto, was my being so much worn out, in the long service, that the tedious tryals in the Court of Justiciary, and the double Circuit annually, are become grievous to me...and two or three years continuance, I have good reason to think, must destroy me quite". BL MS 35448, f. 45v. Charles Areskine, "Letter" (6 Nov. 1753). He was mistaken: Areskine continued as Lord Justice Clerk until his death in April 1763.
- 12 Silvia De Renzi, "Medical Expertise, Bodies, and the Law in Early Modern Courts", *Isis*, 98 (2007), 315–22 at 320–21.
- 13 Paul Langford, "The Uses of Eighteenth-Century Politeness", *Transactions of the Royal Historical Society*, 12 (2002), 311–31 at 312.

### *Reading for Pleasure*

Books for leisure reading had long been included in gentlemen's libraries. By the seventeenth century reading for pleasure was recognised as a valid activity for gentlemen. Books on topics that were not connected with professional activities could be included in libraries and these could be kept purely for enjoyment.<sup>14</sup> Journals appeared which directed gentlemen to books they might like to read in order to better themselves or simply to pass the time. These included the *Journal des Savants* (from 1665), the *Weekly Memorial for the Ingenious* (from 1683), and the *Gentleman's Magazine* (from 1731). The short-lived *Edinburgh Review* started in 1755 with the goal of promoting books deemed polite to its projected gentlemanly readership.<sup>15</sup> Areskine listed books which were unconnected with his profession but he seems to have taken a generally serious approach to the pursuit of knowledge while his Areskine's "miscellaneous" books show his politeness and learning.

Areskine's collection was probably more intellectually serious and focussed on theoretical questions of law than those of many of his professional contemporaries. The Edinburgh lawyer Andrew Buckney (d. 1758), for example, also kept a private library. Buckney possessed legal texts by Grotius and Bankton's *Institute* but the bulk of his collection seems to have been focused on polite learning rather than on the law. His collection included French plays, English fiction, Scottish poetry, histories by George Buchanan and Gilbert Burnet, and books about gardening and painting.<sup>16</sup> It is important to note here, however, that book owners may have had multiple collections and separate catalogues for them. Furthermore, Edinburgh advocates could use the Advocates Library and, from 1722 when they began to collect books officially, the Writers to the Signet (solicitors) had their own institutional collection in Edinburgh. Buckney and other lawyers may have relied on institutional resources for their professional activities while creating collections for leisure use in their homes.

The books on law and legal theory that lawyers used in their profession were also important additions to the collections of polite gentlemen throughout the

<sup>14</sup> T.A. Birrell, "Reading as Pastime: The Place of Light Literature in Some Gentleman's Libraries of the 17th Century", in *Property of a Gentleman: The Formation, Organisation and Dispersal of the Private Library, 1620–1920*, ed. Robin Myers and Michael Harris (Winchester: St Paul's Bibliographies, 1991), 113–31 at 114.

<sup>15</sup> Richard B. Sher, *Church and University in the Scottish Enlightenment: The Moderate Literati of Edinburgh* (Edinburgh: EUP, 1985), 68–69.

<sup>16</sup> Marion Lockhead, *The Scots Household in the Eighteenth Century: A Century of Scottish Domestic and Social Life* (Edinburgh: Moray, 1948), 348; Heather Holmes, "Reading and Study", in *Scotland's Domestic Life*, ed. Susan Storrier, vol. 6 of *Scottish life and Society: A Compendium of Scottish Ethnology* (Edinburgh: John Donald, 2006), 377–99 at 393.

eighteenth century even when they did not practice law. Lord Chesterfield “particularly” recommended texts of natural law such as “*Puffendorf’s Jus Gentium*, and *Grotius de Jure Belli et Pacis*: the last...well translated by Barbeyrac” as “valuable” books which his son should take care to “read every passage twice over...till you...are master of the subject”.<sup>17</sup> In Scotland, John Erskine’s *Principles of the Law of Scotland* of 1754 could be found in 70 per cent of lawyers’ libraries but also in 41 per cent of the libraries surveyed by Mark Towsey in his study of Scottish provincial libraries of the second half of the eighteenth century.<sup>18</sup> Law was a subject fit for polite readers in its own right.

### Intellectual Change: Humanism and Politeness

The tradition of humanistic learning in a general sense came to be challenged in the early eighteenth century. One of its major critics was Jean Le Clerc, an author Areskine had lectured on during his regenting career. Le Clerc and others judged that humanism had failed as an intellectual endeavour because its translation exercises had been carried out inadequately and because its publications had not provided enough historical context. Furthermore, the humanist tradition had failed to make its learning relevant and accessible to the educated lay reader. The polite learning of the Enlightenment offered a fresh approach by encouraging scholars to look at texts anew and to offer fresh comments and interpretations.<sup>19</sup>

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<sup>17</sup> Philip Dormer Stanhope, *Lord Chesterfield’s Advice to his Son on Men and Manners: or, A New System of Education, in which the Principles of Politeness, the Art of Acquiring a Knowledge of the World, with Every Instruction Necessary to Form a Man of Honour, Virtue, Taste, and Fashion, are Laid Down in a Plain, Easy, & Familiar Manner... To which is Now Added, the Marchioness de Lambert’s Advice to Her Son* (2nd edn., London: Printed for Richardson and Urquhart, at the Royal-Exchange, 1775), p. 95.

<sup>18</sup> Mark Towsey, “Reading the Scottish Enlightenment: Libraries, Readers, and Intellectual Culture in Provincial Scotland, c. 1750-c. 1820”, PhD diss. (University of St Andrews, 2007), 40. Unsurprisingly, the same work was present in 70 per cent of libraries owned by legal professionals. *Ibid.*

<sup>19</sup> Jonathan I. Israel, *Enlightenment Contested: Philosophy, Modernity, and the Emancipation of Man, 1670–1752* (Oxford: OUP, 2008), 414–16. Although a fiction and a stereotype of a much later date, Mr Casaubon from George Eliot’s novel *Middlemarch* (published in 1871–72 but set in the early 1830s) provides an example of the type of humanist scholar Le Clerc had in mind. Casaubon’s unwillingness to share his knowledge, his inability to study subjects beyond his interests, and his lack of foreign language skills combine to limit his achievements. Despite his undoubtedly learning, he is not “enlightened” or “polite”.

This approach to polite learning was not new for legal scholars, especially those connected with “elegant” jurisprudence, who had been studying texts with fresh approaches since the seventeenth century. Although they shared humanistic concerns about the proper use of language and the use of rhetoric, these jurists also put law into historical context and provided commentaries. In the Scottish context, meanwhile, humanistic and enlightened themes were both present. Humanism’s traditions and concepts took on new meanings during the eighteenth century.<sup>20</sup> Scottish *literati* resolved the tensions between the types of learning. They had the education needed to process the material while being interested in sharing, explaining, and discussing knowledge. They adopted an interactive approach to learning.

The new impulses in learning were evident in another way: authors, such as Hobbes and Descartes, who had been distrusted for their potentially atheistic approaches at the turn of the eighteenth century were, thanks to their use of mathematics, rehabilitated as harbingers of rationalism.<sup>21</sup> Dutch professors such as the great teacher of medicine Hermann Boerhaave had developed the idea that natural sciences should be studied without invoking sectarian concerns. This model entered the Edinburgh educational establishment following the introduction of the professorial system.<sup>22</sup> Although he did not include any works by Hobbes,<sup>23</sup> Areskine owned works by and about Descartes and his ideas, including one by the notorious atheist Spinoza.<sup>24</sup> By the early eighteenth-century books like these could be read by the enlightened elite who

<sup>20</sup> John W. Cairns, “The Formation of the Scottish Legal Mind in the Eighteenth Century: Themes of Humanism and Enlightenment in the Admission of Advocates”, in *The Legal Mind: Essays for Tony Honoré*, ed. Neil MacCormick and Peter Birks (Oxford: Clarendon, 1986), 253–77 at 258.

<sup>21</sup> David Allan, *Virtue, Learning and the Scottish Enlightenment: Ideas of Scholarship in Early Modern History* (Edinburgh: EUP, 1993), 150.

<sup>22</sup> Simon Schaffer, “The Glorious Revolution and Medicine in Britain and the Netherlands”, *Notes and Records of the Royal Society of London*, 43/2: *Science and Civilization under William and Mary* (1989), 167–90 at 182.

<sup>23</sup> There is, however, one book which criticises Hobbes, see Edward Hyde, Earl of Clarendon, *A Brief View and Survey of the Dangerous and Pernicious Errors to Church and State, in Mr. Hobbes's Book, Entituled Leviathan* ([Oxford]: Printed at the Theater [sic], 1676).

<sup>24</sup> René Descartes, *Discours de la methode: pour bien conduire sa raison, & chercher la verité dans les sciences; plus La dioptrique; Les meteores; et La geometrie. Qui sont des essais de cette methode* (A Leyde: De l’Impimerie de Ian Maire, 1637); René Descartes, *Renati Descartes Epistolæ, partim ab auctore Latino sermone conscriptæ, partim ex Gallico translate. In quibus omnis generis quæstiones philosophicae tractantur, & explicantur plurimæ difficultates quæ in reliquis ejus operibus occurunt. Pars prima* (Londoni: Impensis Joh: Dunmore, & Octaviani Pulleyn, ad insigne regis, in vico Little Brittaine dicto, 1668);

were deemed to have the powers of understanding needed to prevent them slipping into atheism. Scottish book publishing marked these changes. David Allan nominated 1740, the year David Hume's *A Treatise of Human Nature* was completed and John Major's *Historia Majoris Britanniae* was republished as a "pivotal point in the problematic historiography of Scotland's intellectual life" since from then on "Scotland is unashamedly regarded as a country in the grip of an Enlightenment".<sup>25</sup>

## History

In "Of the Study of History", which appeared in his *Essays, Moral and Political* of 1741, David Hume outlined the benefits of historical studies saying

The Advantages of History seem to be of three kinds, as it amuses the Fancy, as it improves the Understanding, and as it strengthens Virtue. In reality, what more agreeable Entertainment to the Mind, than to be transported into the remotest Ages of the World, and to observe human Society in its Infancy, making the first faint Essays towards the Arts and Sciences: To see the Policy of Government, and the Civility of Conversation refining by Degrees, and everything that is ornamental to human Life advancing towards its Perfection.<sup>26</sup>

History was therefore both polite and progressive. It was also practical since

Mankind are so much the same, in all times and places, that history informs us of nothing new or strange....Its chief use is only to discover the constant and universal principles of human nature, by showing men in all varieties of circumstances and situations, and furnishing us with materials from which we may form our observations and become acquainted with the regular springs of human action and endeavour.<sup>27</sup>

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Benedictus de Spinoza, *Renati Des Cartes principiorum philosophiae pars I, & II, more geometrico demonstratae* (Amstelodami: Apud J. Riewerts, 1663).

<sup>25</sup> Allan, *Virtue*, 15. "The Honourable Charles Areskine, His Majesty's Advocate" subscribed to Major's work.

<sup>26</sup> David Hume, *Essays, Moral and Political* (Edinburgh: Printed by R. Fleming and A. Alison, 1741), 69–77 at 72–73.

<sup>27</sup> David Hume, *An Enquiry Concerning Human Understanding*, sect. 8, pt 1, pp. 83–84, quoted in Alexander Broadie, "What was the Scottish Enlightenment?", in *The Scottish*

Law and history had close links in early modern Scotland. As “elegant” Continental jurists and Scottish lawyers had long realised, an understanding of the historical contexts of law was essential for effective legal practice. Areskine’s judicial colleague Lord Kames made this explicit and stated that

In order to form a solid judgment about any statute, and to discover its spirit and intendment, we ought to be well informed about how the law stood at the time, what defect was meant to be supplied, or what improvement made. These particulars require historical knowledge; and therefore, with respect to statute law at least, such knowledge appears indispensable.<sup>28</sup>

Kames’s approach encompasses the concerns of polite learning while respecting the traditions of Scottish jurisprudence. His publication of the previous year, *Statute Law of Scotland Abridged* had its subtitle, *With Historical Notes*.<sup>29</sup> By the eighteenth century, Scottish lawyers were comfortable with enlightened thinking and with understanding the importance of historical contexts. Lawyers studied history to put law into context but the discipline had uses beyond legal concerns, and, as Kames put it, the “history of mankind”, was “a delightful subject”<sup>30</sup> History went on to become “a discipline of major importance” during the Scottish Enlightenment.<sup>31</sup>

The origins and development of societies within their historical contexts were particular concerns during the Scottish Enlightenment. One of the major strands of historical study was the place of feudalism in Scottish history. Seventeenth-century authors such as Thomas Craig had taken a humanistic approach to defining feudal concepts as they were used in Scottish law.<sup>32</sup> Questions about the realities of feudalism still inspire debate but for eighteenth-century historians the feudal era was part of a

*Enlightenment: An Anthology*, ed. Alexander Broadie (Edinburgh: Canongate Classics, 1997), 1–31 at 24.

<sup>28</sup> Henry Home, *Historical Law-Tracts* (Edinburgh: Printed for A. Millar, at Buchanan's Head in the Strand, London; and A. Kincaid, and J. Bell, Edinburgh, 1758), p. ix.

<sup>29</sup> Henry Home, *Statute Law of Scotland Abridged: With Historical Notes* (Edinburgh: Sands, Brymer, Murray & Cochran, 1757).

<sup>30</sup> Home, *Historical Law-Tracts*, p. v.

<sup>31</sup> Cairns, “Formation”, 262.

<sup>32</sup> John W. Cairns, “Craig, Cujas, and the Definition of feudum: Is a feu a usufruct?”, in *New Perspectives in the Roman Law of Property*, ed. Peter Birks (Oxford: Clarendon, 1989), 75–84.

bigger historical narrative of progression.<sup>33</sup> Traditional forms of lordship were by no means extinct in eighteenth-century Scotland.<sup>34</sup> Areskine's patron, the third duke of Argyll, for example, was also a landowning clan chief who "reckoned...wealth not in sheep, cattle, or acres, but in the size of his following". Members of the clan, both gentry and commoners, "depended on the bounty of the chief to provide them with land". Dependents worked farms, raised and traded cattle, and provided military service domestically or in continental armies. The chief had obligations to his dependents which included providing land, protection, and hospitality, and relieving hardship. Eric Cregeen has argued that the idea that the old highland system of clan chief and dependent "died on the field of Culloden in 1746...is naïve and superficial". By the 1740s and until his death in 1761, the duke of Argyll "played a dual role, half traditional chief, half modern landlord and entrepreneur".<sup>35</sup>

Areskine placed his copy of Sir John Dalrymple's *An Essay towards a General History of Feudal Property in Great Britain* of 1757 with his law books. Areskine was himself a landowner and had enough of a sense of having a tie to land to save the family estate at Alva when his brother's mismanagement meant its loss. It is significant that he did this at the cost of selling his own new estate at Tinwald which he had been able to purchase with proceeds derived from his profession. Areskine also dealt with legal issues relating to inheritance throughout his career so he may have found this book useful as a practical text as well as a theoretical one. However, alongside its usefulness as a legal text, the book was also a product of the Enlightenment.<sup>36</sup> Dalrymple dedicated his book to Kames and frequently cited Montesquieu throughout his discussion of the progressive history of legal and societal change in Scotland and England. Scottish philosophers were greatly influenced by Montesquieu's *The Spirit of*

33 For a recent debate on this matter see, e.g., Hector L. MacQueen, "Tears of a Legal Historian: Scottish Feudalism and the *ius commune*", *Juridical Review* (2003), 1–28 where he disputes Susan Reynold's thesis "that feudalism and feudal law are essentially late-medieval and later academic constructs" at 1.

34 Feudalism itself was not abolished in Scotland until 28 Nov. 2004 when the Abolition of Feudal Tenure etc. (Scotland) Act (2000) came into effect. MacQueen, "Tears", 1. See also Kenneth G.C. Reid, "Vassals No More: Feudalism and Post-Feudalism in Scotland", *European Law Review*, 3 (2003), 282–300.

35 Eric Cregeen, "The Changing Role of the House of Argyll in the Scottish Highlands", in *Scotland in the Age of Improvement: Essays in Scottish History in the Eighteenth Century*, ed. N.T. Phillipson and Rosalind Mitchison (Edinburgh: EUP, 1970; repr. 1996), 5–23 at 6–10, 16.

36 I am grateful to John Cairns for pointing out the importance of the work in this context to me.

*the Laws of 1748* and enhanced its idea that societies developed in stages.<sup>37</sup> Both Dalrymple and Kames viewed the feudal system negatively since they linked it with decline.<sup>38</sup> The different situations of England as a mercantile and therefore advanced nation and Scotland which had "little or no commerce"<sup>39</sup> explained why the two nations had developed so differently. Until the Union, Scotland had suffered since

The constitution of Scotland, till incorporated with England, was in fact a mixture of monarchy and oligarchy: the nation consisted of a commonalty without the privilege of chusing their own representatives; of a gentry intitled indeed to represent by election, but unable to serve the nation; and of a nobility, who oppressed the one, and despised both.<sup>40</sup>

For Dalrymple, the Union of fifty years before represented progress since

our lords and commons being incorporated with those of the English, the constitution of Scotland is settled upon the just poise, betwixt monarchy, aristocracy, and democracy, which has made the constitution of England the wonder of mankind.<sup>41</sup>

The power of the clan chiefs was waning. Dalrymple made his message clear on the final page of his book: England should provide a model for the adoption of a balanced constitution as Scotland evolved into a fellow mercantile and therefore equal nation. He wrote:

37 John W. Cairns, "Natural Law, National Laws, Parliaments and Multiple Monarchies: 1707 and Beyond", in *Northern Antiquities and National Identities: Perceptions of Denmark and the North in the Eighteenth Century*, ed. Knud Haakonssen and Henrik Horstbøll (Copenhagen, 2008), 88–112, 322–31 at 108.

38 R.J. Smith, *The Gothic Bequest: Medieval Institutions in British Thought, 1688–1863* (Cambridge: CUP, 2002), 75.

39 John Dalrymple, *An Essay Towards a General History of Feudal Property in Great Britain, under the Following Heads, I. History of the Introduction of the Feudal System into Great Britain. II. History of Tenures. III. History of the Alienation of Land Property. IV. History of Entails. V. History of the Laws of Succession or Descent. VI. History of the Forms of Conveyance. VII. History of Jurisdictions, and of the Forms of Procedure in Courts. VIII. History of the Constitution of Parliament* (London: Printed for A. Millar, in the Strand, 1757), 327.

40 Ibid. 330.

41 Ibid. 331.

In the declensions of almost every part of the feudal system, the English have gone before us: at the distance of one, and sometimes of many centuries, we follow. However distant, at present, the prospect may appear, there is no impossibility, in a future age, that the limitation of electors, which subsists at present, from the lingering of the feudal system amongst us, may give way, to the more extended, and allodial right of election, which takes place among the English.<sup>42</sup>

Feudalism had political resonances and the study of Scottish medieval history in general interested intellectuals who wanted to explore Scotland's story in a European context. History insulated against a misplaced and "dangerous nostalgia particularly of the Jacobite variety" and it could be used to explain England's dominance as a feature of geography and economic success after 1707 and again after the uprising of 1745.<sup>43</sup> Many, such as Dalrymple and Kames, also believed that Scotland had nearly reached the highest level of development and would soon be able to match English achievements.

Specific events and personalities attracted historical writers because they could help illustrate these historical developments within a Scottish context. The reign and personality of Mary, Queen of Scots, for example, inspired political and historical critiques beginning with those of her contemporary George Buchanan. Buchanan, who had read the Roman historian Livy to Mary and, as her tutor, had tried to give her a humanist education, later wrote works defending her overthrow.<sup>44</sup> Debates about Mary's influence on the national story continued well into the eighteenth century. Publications that Areskine owned such as James Anderson's *Collection Relating to the History of Mary, Queen of Scotland* (Edinburgh, 1727–1728), James Freebairn's *The Life of Mary Stewart, Queen of Scotland and France* (Edinburgh, 1725), and William Tytler's *An Historical and Critical Inquiry into the Evidence Produced by the Earls of Moray and Morton, against Mary, Queen of Scots* (Edinburgh, 1760) considered her life, times, and the legal, political, and religious legacies and controversies which surrounded her from eighteenth-century perspectives. Of the last, Horace Walpole commented that he could not "say I am surprised to hear that the controversy on the Queen of Scots is likely to continue" when the book was published.<sup>45</sup>

<sup>42</sup> Ibid. 332.

<sup>43</sup> Smith, *Gothic Bequest*, 74–75.

<sup>44</sup> Arthur Williamson, "Education, Culture and the Scottish Civic Tradition", in *Shaping the Stuart World, 1603–1714: The Atlantic Connection*, ed. Allan I. Macinnes and Arthur H. Williamson (Leiden: Brill, 2006), 33–54 at 33, 37.

<sup>45</sup> Horace Walpole, in Horace Walpole and David Dalrymple, *Horace Walpole's Correspondence with Sir David Dalrymple*, ed. W.S. Lewis, Charles H. Bennett and Andrew

After 1707, Scottish printers and editors who had Jacobite sympathies such as Robert Freebairn, James Watson, and Thomas Ruddiman published collections, including George Buchanan's works (Edinburgh, 1715) and the works of William Drummond of Hawthornden (Edinburgh, 1711), which reminded their readers of the proud tradition of the humanistic learning of Renaissance Scotland.<sup>46</sup> James Anderson's *An Historical Essay Shewing the Crown and Kingdom of Scotland is Imperial and Independent* (Edinburgh, 1705) and *Critical Essay on the Ancient Inhabitants of the Northern Parts of Britain, or Scotland* (London, 1729) by the exiled Jacobite priest Thomas Innes (described in Areskine's list as "Mr. Tho: Innes") meanwhile used historical studies to make the case for the uniqueness of the Scottish identity.<sup>47</sup> Areskine himself, despite having Jacobite links in the early years of the century via his cousin the earl of Mar who led the rebellion of 1715, his brother Sir John who supported his cousin Mar, and his brother Robert who tried to interest Peter the Great in supporting the cause, had no sympathy for the Highland Jacobites whom he dismissed as "deluded animals" by the 1750s.<sup>48</sup>

Scottish historians expanded their activities throughout the century and saw their discipline as enlightened. Furthermore, the "study of history" encouraged ambitious citizens to become "public spirited, eloquent, active and learned".<sup>49</sup> Historians explored their discipline with various approaches including biographical accounts, histories of institutions, and histories of places. Areskine's library of miscellaneous books contained examples of all of these historical genres and the scope and subjects of his history books went beyond Scotland's borders. The oldest book Areskine listed was an incunable: Suetonius's *Lives of the Caesars* printed in Venice in 1471.<sup>50</sup> His other biographies included lives of people both ancient and modern throughout history from Conyers Middleton's *The History of the Life of Marcus Tullius Cicero* (London, 1741) to, unsurprisingly given his brother Robert's involvement with

G. Hoover, vol. 15 of *The Yale Edition of Horace Walpole's Correspondence* (London; New Haven: OUP; Yale University, 1952), 61–62.

<sup>46</sup> John Robertson, *The Case for the Enlightenment: Scotland and Naples, 1680–1760* (Cambridge: CUP, 2005), 116.

<sup>47</sup> Ibid. 134–35.

<sup>48</sup> Charles Areskine, "Letter" (21 Apr. 1750), ff. 141–41v. For Robert's activities on behalf of the Jacobites at the Russian court see Rebecca Wills, *The Jacobites and Russia, 1715–1750* (Edinburgh: Tuckwell, 2002), 41–58.

<sup>49</sup> Allan, *Virtue*, 148, 194.

<sup>50</sup> *Begin. Versus Ausonii in libros Suetonii...Caii Suetonii Tranquilli de vita XII. Cæsarum liber primus Divus Julius Caesar incipit foeliciter. End. Caii Suetonii Tranquilli de vita XII. Cæsarum liber duodecimus Domitianus Imperator Augustus foeliciter finit.*

their subject, two histories of the life of Peter the Great by John Mottley (London, 1739) and Alexander Gordon (Aberdeen, 1755).<sup>51</sup> Some history books, such as Sarah Scott's *The History of Gustavus Ericson, King of Sweden. With an Introductory History of Sweden, from the Middle of the Twelfth Century* (London, 1761), combined the study of a person with the history of a place. Areskine's national and institutional histories included John Spottiswood's *The History of the Church and State of Scotland, Beginning the Year of Our Lord 203, and Continued to the End of the Reign of King James the VI* (London, 1677), David Calderwood's *The True History of the Church of Scotland, From the Beginning of the Reformation, unto the End of the Reigne of King James VI* (Edinburgh?, 1678), and Robert Lindsay's *The History of Scotland; From 21 February, 1436. to March, 1565. in which are Contained Accounts of Many Remarkable Passages Altogether Differing from Our Other Historians* (Edinburgh, 1728). William Maitland's *The History of Edinburgh: From its Foundation to the Present Time* (Edinburgh, 1753) brought the historical narrative up to date for its target market, the Edinburgh elite.

## Religion

Although there is no evidence in his library that his beliefs were in any way unconventional, Areskine did own some books which addressed religious controversies. “Atheistical” texts could cause problems for readers who were not protected by their status. Areskine’s interest in religious subjects does not seem to have been a cause for concern among his peers. His professed Newtonianism may have insulated him from accusations of unorthodox religious belief during his regenting career and throughout the rest of his life.

Areskine participated in the formal and informal government of the Church of Scotland. Areskine’s children were baptised by not one but two Moderators of the Church of Scotland, William Carstares and James Grierson.<sup>52</sup> The Kirk

<sup>51</sup> Dr Robert Areskine had been a physician, librarian, and advisor at Peter’s court.

<sup>52</sup> See NLS MS 5161, ff. 7-7<sup>v</sup>. *Acts of the General Assembly of the Church of Scotland, MDCCXXXVIII-MDCCXLII Reprinted from the Original Edition, under the Superintendence of the Church Law Society* (Edinburgh: Edinburgh Printing and Publishing, 1843), 1206. NLS MS 5161 notes the baptisms of five of Charles and Grisel’s children from 1714 to 1719. William Carstares performed the first of these while James Grierson, “minister of the College Kirk”, did the next four. Carstares was principal of the University of Edinburgh and minister at various Edinburgh parishes. He was Moderator of the General Assembly in 1705, 1708, 1711, and 1715. James Grierson was the minister at the College Kirk from 1710 until 1714. He was Moderator of the General Assembly in 1719. The “College Kirk” was Trinity College Kirk

was "increasingly favourable to enlightened notions" by the 1720s and this tolerance may have increased its appeal for Areskine and other moderates.<sup>53</sup> Members of the legal profession were well aware of the importance of being seen at religious services and where they sat reinforced their status as leaders in society. Areskine was a member of the Tron kirk and his rate of seat rental, an indicator of status, was second only to that of Lord Minto, a baronet as well as a judge, in 1726.<sup>54</sup> Areskine represented the Burgh of Sanquhar as their commissioner at the General Assembly from 1726 to 1729.<sup>55</sup> Areskine was a "moderate" member of the Kirk and he continued to represent his area at the General Assembly. Areskine was "Unanimously Chosen" by the Presbytery of Dumfries to "represent them as Elder in the next Generall Assembly" in 1739 since the "difficulty and Importance of Some affairs they apprehend will come under the consideration of that Court make them more earnestly wish the presence of your Lordships Known Abilitys Moderation and Influence".<sup>56</sup> The General Assembly was then considering the cases of Ebenezer Erskine and his followers who had left the Church of Scotland to form the Associate Presbytery in 1732. Debates were ongoing throughout the 1730s and early 1740s and the Dumfries Presbytery clearly wanted Areskine to use his experience and his political and legal skills at these meetings.<sup>57</sup> Erskine, so far as I can tell no relation to Charles Areskine, was a popular preacher who regularly opposed controversial matters of church policy. In 1732, he and several other ministers protested against the General Assembly's move to increase its patronage power over appointing ministers to vacant parishes. Erskine and the Associate Presbytery continued their protests throughout the 1730s: this put them in direct opposition to Archibald Campbell and his allies, including Areskine.<sup>58</sup>

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which was at the foot of Calton Hill. A. Ian Dunlop, *The Kirks of Edinburgh: The Congregations, Churches, and Ministers of the Presbytery of Edinburgh, Church of Scotland, 1560–1984*, Scottish Record Society, new ser., 15–16 (Edinburgh: Scottish Record Society, 1988), 49, 82, 359, 364. Grierson may have been related to Areskine's first wife, Grisel Grierson of Barjarg.

53 Emerson, *Essays*, 242.

54 John Finlay, *The Community of the College of Justice: Edinburgh and the Court of Session, 1687–1808* (Edinburgh: EUP, 2012), 42–43.

55 James Brown, *The History of Sanquhar* (Edinburgh; Glasgow: John Menzies, 1891), 43.

56 Walter Stewart, "Letter" (Mar. 1739), NLS MS 5074, f. 143.

57 The debates continued for many years after the expulsion of these by the General Assembly. The moderate party's journal the *Edinburgh Review* criticised the "crude, pious sermons of Ebenezer Erskine" in 1755. Sher, *Church and University*, 68–69.

58 David C. Lachman, "Erskine, Ebenezer (1680–1754)", *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article18853>> accessed 15 Aug. 2014.

The Act of the General Assembly of 1732, which gave landed gentry the right to appoint ministers rather than congregations, sparked the conflict.<sup>59</sup> The issue was one of the structural management of the church rather than an issue of faith. Areskine was a patron in his own right. He was an early supporter of the moderate clergyman John Jardine (1716–1766) whom he appointed as the political manager of the burgh of Lochaber in 1745. Jardine went on to become the minister for Lady Yester's Church in 1750 and then of the Tron Kirk in 1754. Like Areskine, he was a friend of David Hume. He contributed to the *Edinburgh Review* and was a member of several Edinburgh clubs.<sup>60</sup>

Despite his kirk activities, Areskine's attitude towards religion seemed ambivalent to at least one of his fellow Church of Scotland representatives, James Boswell's grandfather, James Boswell of Auchinleck. The younger Boswell reported that "when Charles Areskine said in the General Assembly that he was a Presbyterian, but according to law, My Grandfather said, 'I was a Presbyterian when it was against law'".<sup>61</sup> However, after the death of Areskine's son Charles in 1749, the earl of Hardwicke wrote that he had had reports from friends in common and had "...receiv'd some consolation in hearing that You bore your misfortune with true Christian Philosophy".<sup>62</sup>

Evidence for his moderate attitude to religion is also found in Areskine's manuscript library list of 1731. Although a professed Presbyterian, Areskine owned works which demonstrated his interest in other views. These included books like John Spottiswood's *The History of the Church and State of Scotland* (London, 1677) which "was unquestionably an apologia for the royalist and Episcopal cause in Scotland"<sup>63</sup> and William Chillingworth's *The Religion of Protestants a Safe Way to Salvation* (London, 1684) which promoted toleration among Christians.<sup>64</sup> Chillingworth was also represented by Pierre Des Maizeaux's biography, *An Historical and Critical Account of the Life and Writings*

59 James Moore, "Presbyterianism and the Right of Private Judgement: Church Government in Ireland and Scotland in the Age of Francis Hutcheson", in *Philosophy and Religion in Enlightenment Britain: Case Studies*, ed. Ruth Savage (Oxford: OUP, 2012), 141–68 at 157–58.

60 Richard B. Sher, "Jardine, John (1716–1766)", *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/14662>> accessed 12 July 2015.

61 Mary Margaret Stewart, "James Boswell and the National Church of Scotland", *Huntington Library Quarterly*, 30 (1967), 369–87 at 375–76.

62 NLS MS Erskine Murray 5076, f. 111. Philip Yorke, earl of Hardwicke, "Letter" (29 Aug. 1749).

63 A.S. Wayne Pearce, "Spottiswoode, John (1565–1639)", *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/26167>> accessed 31 Jan. 2011.

64 Warren Chernaik, "Chillingworth, William (1602–1644)", *ODNB* (Oxford: OUP, 2004; online edn, Jan. 2010) <<http://www.oxforddnb.com/view/article/5308>> accessed 31 Jan. 2011.

of W. Chillingworth (London, 1725). Bernard Mandeville's *Free Thoughts on Religion, the Church, and National Happiness* (London, 1723) urged toleration while criticising the conflict caused by clergy who sought to codify and enforce religious belief.<sup>65</sup> Spottiswood, Chillingworth, and Mandeville had very different views but they all encouraged toleration.

Some of Areskine's books considered mystical Christianity. These include the complete works of the Silesian mystic Jakob Bohme translated into English by John Sparrow and published in four volumes in London between 1649 and 1662. Bohme was a theosophist who promoted the development of a personal spiritual relationship with God. His ideas appealed to those who were repelled by religious factionalism. He was also popular among natural philosophers who agreed with his idea that science offered the key to understanding the universe.<sup>66</sup> Areskine's only two editions of collected sermons were those of the Episcopalian bishops Robert Leighton and Gilbert Burnet both of whom believed in promoting personal spiritual development as a means of limiting the sectarianism caused by institutionalising belief.<sup>67</sup> Leighton was an influential neo-Stoic who encouraged the use of reason when considering questions of conscience and Burnet was his favourite protégé.<sup>68</sup> The continental mystical tradition meanwhile is represented by works such as Abbel Bertot's *Le directeur mystique, ou Les œuvres spirituelles de Monsr. Bertot* (Amsterdam, 1726) and Charles Hector de St. George Marsay's *Discourses on Subjects Relating to the Spiritual Life* (Edinburgh, 1747). Bertot and Marsay followed the Behemist tradition in their promotion of personal spiritual development. Marsay was particularly popular in Scotland perhaps not least because his mystical approach did not concern itself with the politics of organised religion.<sup>69</sup>

65 Robertson, *Case*, 265.

66 K. Grudzien Baston, "Sparrow, John (1615–1670)", ODNB (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/26087>> accessed 13 Oct. 2010.

67 Martin Greig, "Burnet, Gilbert (1643–1715)", ODNB (Oxford: OUP, 2004; online edn, Jan. 2008) <<http://www.oxforddnb.com/view/article/4061>> accessed 31 Jan. 2011; Hugh Ouston, "Leighton, Robert (bap. 1612, d. 1684)", ODNB (Oxford: OUP, 2004; online edn, Jan. 2008) <<http://www.oxforddnb.com/view/article/16402>> accessed 31 Jan. 2011. Areskine's wife had Burnet's "Letters of Travelling" in her library. This was his *Some Letters Containing an Account of What Seemed Most Remarkable in Switzerland, Italy &c* (Rotterdam: Printed by Abraham Acher, 1686) which included a description of the lawyer Giuseppe Valletta's famous library in Naples. This put Valletta's library on the map for visiting intellectuals and it is the sort of place Areskine may have visited when he was in Naples. NLS MS 5161, f. 19; Robertson, *Case*, 139.

68 Robertson, *Case*, 138–39.

69 Geoffrey Rowell, "The Marquis of Marsay: A Quietist in 'Philadelphia'", *Church History*, 41 (1972), 61–77 at 62, 63, 73, 75–76. For Scottish Pietists, who were mostly Jacobites, see

Areskine seems to have been interested in a variety of approaches to religion. His library included a wide spread of religious literature such as Pierre Boyer's anti-Jesuit *A Parallel of the Doctrine of the Pagans: With the Doctrine of the Jesuits* (London, 1726), Muhammad Rabadan's *Mahometism Fully Explained* (London, 1723) and Stephen Lobb's *The Growth of Error: Being an Exercitation Concerning the Rise and Progress of Arminianism, and More Especially Socinianism, Both Abroad and Now of Late, in England* (London, 1697). Whatever his private beliefs might have been, it is interesting that Areskine owned at least one pro-Spinozan work which was clandestinely printed. This is listed as "Heinsij Operūm historicū Collectio Lug: Bat: 1673" which is a false author and title for an underground work. The Short Title Catalogue of the Netherlands notes that Lodewijk Meijer's *Philosophia S. Scripturae interpres* (1673) was an

Edition with three fictitious titles: F.H. de Villacorta, *Opera chirurgica omnia* (Amstelodami: Apud J. Paulli, 1673); D. Heinsius, *Operum historico-rum collectio secunda* (Lugd. Batav.: Apud I. Herculis, 1673); and F. Deleboe Sylvius, *Totius medicinae idea nova, pars secunda* (Amstelodami: Apud C. Gratiani, 1673). Issued as 2nd volume of Benedictus de Spinoza, *Tractatus theologico-politicus* (1673) (with fictitious titles) and as part of Idem, 1674.<sup>70</sup>

Meijer's book, originally published in 1666, was banned by the Dutch Republic along with Spinoza's *Tractatus* in 1674. Both works used philosophy "to undermine the status of Scripture".<sup>71</sup> Whether Areskine knew what he was buying is, of course, open to question as is any interpretation about why he placed it on his shelves and recorded it in his list. It may be the case that whoever wrote the catalogue knew nothing of the controversial nature of the book and merely wrote what the title page said. One of the few novels found in Areskine's 1731 list also expressed Spinozian ideas. Areskine's copy of Simon Tyssot de Patot's *Voyages et aventures de Jaques Massé* was a clandestine publication which was allegedly published in Bordeaux in 1710. Tyssot was a mathematics teacher at Deventer who eventually lost his position because of his persistent Spinozism. His novel questions the morality of organised religions and promotes a moral way of life based on equality and fairness.<sup>72</sup>

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David E. Shuttleton, "George Cheyne and 'The Catechism': A Missing Title from the Press of Samuel Richardson", *Library*, 7th ser., 12 (2011), 37–49 at 40–41.

<sup>70</sup> STCN, <<http://picarta.pica.nl/DB=3.11/XMLPRS=Y/PPN?PPN=115758038>> accessed 14 Sept. 2011.

<sup>71</sup> Israel, *Enlightenment Contested*, 34.

<sup>72</sup> Ibid. 393, 594–95.

Areskine's small collection of bibles, meanwhile, seems more focussed on their languages and formats than on their contents. Areskine had bibles in Italian, Greek, and Spanish and these all had impeccable humanist Protestant credentials. What Areskine's list described as "A Spanish Bible...1569" was most likely the first version of the bible translated into Spanish by the Spanish Protestant humanist Casiodoro de Reina, a former priest.<sup>73</sup> This translation came to be known as the "Bear Bible" from its printer's device and was an "agent of Protestant propaganda".<sup>74</sup> Reina had gone back to the earliest sources available in Greek and Hebrew and his work had taken a decade to complete. Reina's methodology was similar to that of legal humanist scholars who employed the same *ad fontes* approach to their translation and emendation projects relating to legal texts. Although it was already a rare book by 1602, Reina's work provided a template for the English King James Bible of 1611.<sup>75</sup>

Areskine's Italian bible was Antonio Brucioli's translation published in Venice in 1538. The Florentine Brucioli had humanist credentials: he had fled from Florence in 1522 for political reasons and picked up Lutheran ideas in France before settling in Venice.<sup>76</sup> Areskine's "Vetus Testamentum Græcum, Ex Versione Septuaginta Interpretum" was an edition of the Septuagint edited by the English controversialist John Biddle.<sup>77</sup> Areskine also owned Biddle's critique of earlier translators.<sup>78</sup> Gerhard van Maestricht's new testament of 1711 was also notable for its critical approach to the text. The edition of John Mill's Greek edition of the new testament of 1710 that Areskine owned was so heavily annotated by Mill that his variant readings attracted criticism for distracting too much from the text.<sup>79</sup> The bibles Areskine collected shared

<sup>73</sup> A. Gordon Kinder, *Casiodoro de Reina: Spanish Reformer of the Sixteenth Century* (London: Tamesis, 1975), 18–19.

<sup>74</sup> Ludwig Rosenthal, "'Bear Bible', Spanish", *Notes and Queries*, 10th ser., 4/92 (1905), 274–75; Kinder, *Casiodoro de Reina*, 52.

<sup>75</sup> Kinder, *Casiodoro de Reina*, 54–55.

<sup>76</sup> Paolo Rossi, "Brucioli, Antonio (1490/1500–1560)", in *The Oxford Companion to Italian Literature*, ed. Peter Hainsworth and David Robey (Oxford: OUP, 2002), 86.

<sup>77</sup> Stephen D. Snobelen, "Biddle, John (1615/16–1662)", *ODNB* (Oxford: OUP, 2004; online edn, Oct. 2007) <<http://www.oxforddnb.com/view/article/2361>> accessed 2 Feb. 2011. It is described in the index to Areskine's catalogue simply as "The Greek Septuagint". NLS MS 3283, f. 213.

<sup>78</sup> *In sacra Biblia Græca ex versione LXX. interpretum scholia; simul et interpretum cæterorum lectiones variants* (Londoni: Excudebat Rogerus Daniel: prostat autem venale apud Joannem Martin & Jacobum Allestrye, sub signo campanæ in Coemeterio D. Pauli, 1653).

<sup>79</sup> Stuart Handley, "Mill, John (1644/5–1707)", *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/18710>> accessed 2 Feb. 2011.

a similar humanistic approach to his scholarly legal books. They are not works of devotion but of scholarship combined with pro-Protestant propaganda. The vernacular translators of Areskine's bibles had used learning as a means of discovering the truths hidden within the original biblical texts. They believed that these had been distorted during the centuries that the Roman Catholic Church had dominated Christian belief and they thought their translations offered more valid versions of the Christian story in accessible languages.

If it is possible to learn about a person by looking at the books on his shelves, we can conclude from this brief survey of some of his religiously themed books that Areskine took a moderate protestant approach to religious belief and practice, that he may have been interested in developing his personal spirituality, that he was confident in his selection of potentially controversial books, and that he was interested in studying religious texts with the same scholarly approach he employed with his legal texts. An anonymous broadsheet poem published in Leith in about 1733 may sum up many of Areskine's attitudes about religion and religious politics. *The Moderate Man's Confession* sets out the reasonable approach of its eponymous spokesman who says

I think freely, I own, yet I firmly believe;  
 I'm not vain of my Judgment, nor pinn'd on a Sleeve.  
 To sift Truth from all Rubbish I do what I can;  
 And GOD knows, if I err, I'm a fallible Man....  
 Any faults of my Friends I would scorn to expose...  
 No Man's Person I hate, tho' his Conduct I blame;  
 I can censure a Vice, without stabbing a Name.  
 To amend, not reproach, is the Bent of my Mind,  
 (A Reproff is half lost when ill Nature is join'd.)...  
 Cool Reason I bow to, wheresoever 'tis found,  
 And rejoice when sound Learning with Favour is crown'd....  
 I dote on my Country, and am Leige to my King....  
 Tho' Length of Days I desire, yet, with my last Breath,  
 I'm in Hopes to betray no mean Dreadings of Death;  
 And as to the Ways after Death be trode,  
 I submit to the will of an infinite GOD.<sup>80</sup>

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80 *The Moderate Man's Confession* (Printed for and sold by William Yetts on the pier of Leith, 1733?).

## Improvement

There is no doubt that Areskine was interested in modernising Scotland. He participated in organisations dedicated to improving Scotland's economy and he improved the quality of his estates at Tinwald and Alva. As a landowner, he could encourage modernisation both as a private estate owner and more generally as a member of the Scottish ruling elite. Areskine's membership in new institutions and his involvement with attempts to modernise Scotland confirm his commitment to an "improving" ideal which he shared with his patron, the earl of Ilay, and other members of elite Scottish society. Many members of this elite came together to form societies and clubs which then played active roles in promoting culture or invigorating extant organisations with their wealth and influence. Areskine, a member of the Edinburgh Musical Society, a member of the Honourable the Improvers in the Knowledge of Agriculture of Scotland, and a shareholder in the three major Scottish banks, the Bank of Scotland, the Royal Bank of Scotland, and the British Linen Company, was involved in many organisations beyond his profession.<sup>81</sup>

One of the most important of the organisations dedicated to improvement in early eighteenth-century Scotland was the Philosophical Society of Edinburgh.<sup>82</sup> The Society was proposed in 1737 as a non-religious and non-political association for scientific discussion and for the promotion of projects to modernise Scotland. The Society came into life in 1739 with Areskine as one of its founder members. Areskine fits the template of a "typical member" described by Roger L. Emerson:

...an active professional man from the landed gentry who was politically involved and held a patronage post which enhanced an income not wholly derived from rents...he was aware of the backwardness and provincialism of his country, and patriotic enough to wish to remedy it. Relying on provincial institutions for his status and income, he sought to raise it both through improvements which would modernize the country, and allow it and him to play a greater role in the world.<sup>83</sup>

Of the original forty-six Scottish members of the Edinburgh Philosophical Society twelve were advocates.<sup>84</sup> Although the demographics of its membership

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<sup>81</sup> Roger L. Emerson, "The Philosophical Society of Edinburgh, 1737–1747", *British Journal for the History of Science*, 12 (1979), 154–91 at 190.

<sup>82</sup> Ibid. 181–82.

<sup>83</sup> Ibid. 173.

<sup>84</sup> Ibid. 172.

changed over its first few decades, the Society retained its focus on practical and useful approaches to modernisation. Unfortunately the membership lists between 1739 and 1769 do not survive so it is not known how active Areskine was in the Society.<sup>85</sup> However, the books in his library offer some clues about his improving concerns. Areskine's interest in the benefits of agriculture and science went beyond his book shelves and he may have referred to his books when he made decisions about "improving" his estates, especially at Alva in Clackmannanshire.

Entries in Areskine's library list indicate that he was interested in agriculture and husbandry. His selections range from the ancient books of Columella which are present in both Latin and English and Cato and Varro in Latin to Robert Maxwell's *Select Transactions of the Honourable the Society of Improvers in the Knowledge of Agriculture in Scotland. Directing the Husbandry of the Different Soils for the Most Profitable Purposes* of 1743 which offered descriptions of innovative modern farming techniques.<sup>86</sup> Although he was not pleased to take on responsibility for it, Areskine actively sought to improve the family estate at Alva by planting trees there. Two books of his would have been useful in this context. Moses Cook's *The Manner of Raising, Ordering, and Improving Forest-Trees: With Directions How to Plant, Make, and Keep Woods, Walks, Avenues, Lawns, Hedges, &c.* (London, 1717) offered the practical instructions offered in its title. Areskine also owned Philip Miller's learned, practical, and popular *Gardener's Dictionary* in a Dublin edition of 1741. Areskine's brother had begun improving the land before he died and his son would continue the process.<sup>87</sup> Lord Alva eventually sold the estate in 1775 when it was advertised for sale with the enticement that the "woods are thriving, and of great value".<sup>88</sup> Areskine's own contribution included planting forty-four apple, twenty-three pear, twelve plum, and fourteen cherry

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85 Roger L. Emerson, "The Philosophical Society of Edinburgh, 1748–1768", *British Journal for the History of Science*, 14 (1981), 133–76 at 165.

86 W.A.S. Hewins, "Maxwell, Robert (1695–1765)", rev. Rosalind Mitchison, *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/18411>> accessed 5 Feb. 2011. The ancient texts on husbandry and agriculture may also have been useful for Areskine as a lawyer since he could have used them to understand the mechanics of Roman society and how law worked within it. I am grateful to John W. Cairns and Paul du Plessis for this observation.

87 Robert Paul, "Alva House Two Hundred Years Ago", *Stillfoots Record* [Alva], 27 Mar.–10 Apr. 1901. Paul credited Sir John with "most of the plantations which now surround the enclosures and fields immediately below the house" while Lord Alva had planted the sides of the hill above the house.

88 Clackmannanshire Archives, ms PD239/108/11.

trees in the “Garden of Alva” and giving instructions for growing and shaping hedges on the estate in 1756.<sup>89</sup>

Areskine was also interested in the industrial processes and developments relating to linen manufacture. His library included Francis Home’s *Experiments on Bleaching* of 1756 and *A Collection of the Acts of Parliament, Now in Force, Relating to the Linen Manufacture* of 1751. Home’s work was notable for its use of science to improve the effectiveness and profit of linen bleaching by replacing sour milk with dilute sulphuric acid.<sup>90</sup> Scottish improvers identified the linen industry as having potential for economic success. The Board of Trustees for Manufactures was established in 1727 and one of its key policies was developing the linen trade.<sup>91</sup> The British Linen Company emerged from the Board of Trustees when it was established by royal charter in 1746 to promote linen production and trade.<sup>92</sup> Areskine’s judicial colleague Lord Milton owned linen manufactories at Saltoun in East Lothian and at Brunstane near Edinburgh.<sup>93</sup> Milton encouraged the duke of Argyll’s involvement in of the British Linen Company: Argyll subscribed £3,000 to the Company and duly became its first governor.<sup>94</sup> Milton meanwhile endorsed Argyll’s inclusion of facilities for weaving at his Inverary New Town.<sup>95</sup>

Areskine had close links to linen. His suburban villa at Drumsheugh near Edinburgh adjoined a small linen manufactory.<sup>96</sup> Areskine acquired the “Mansion House” at Drumsheugh in 1755. It had probably built for James Donaldson, the linen manufacturer, early in the eighteenth century. The manufactory stayed in business until 1769 when it was converted for residential

<sup>89</sup> NLS, MS 5077, f. 202.

<sup>90</sup> Iain Milne, “Home, Francis (1719–1813)”, *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/13640>> accessed 5 Feb. 2011.

<sup>91</sup> Vanessa Habib and Helen Clark, “The Linen Weavers of Drumsheugh and the Linen Damask Tablecloth Woven to Commemorate the Visit of George IV to Scotland in 1822”, *Proceedings of the Society of Antiquaries in Scotland*, 132 (2002), 529–53 at 530.

<sup>92</sup> Alistair J. Durie, *The British Linen Company, 1745–1775* (Edinburgh: Scottish History Society, 1996), 5–7.

<sup>93</sup> Habib and Clark, “Linen Weavers”, 532. For more on Milton’s involvement in the Scottish textile industry see Michael Fry, “Fletcher, Andrew, Lord Milton (1691/2–1766)”, *ODNB* (Oxford: OUP, 2004; online edn, Jan. 2007) <<http://www.oxforddnb.com/view/article/9721>> accessed 5 Feb. 2011.

<sup>94</sup> Durie, *British Linen Company*, 7.

<sup>95</sup> Ian G. Lindsay and Mary Cosh, *Inverary and the Dukes of Argyll* (Edinburgh: EUP, 1973), 145, 171. Inverary New Town also featured a school for spinning from 1751 until 1758 when it closed because everyone in the district had by then learned the skill. *Ibid.* 171–73.

<sup>96</sup> Habib and Clark, “Linen Weavers”, 531.

use.<sup>97</sup> The Barony Court at Alva, although without Areskine's direct involvement, managed weavers on his country estate in the mid-eighteenth century although the type of cloth they were making is not stated.<sup>98</sup> Edinburgh lawyers like Areskine and Milton were not only the instigators of the linen industry: they also provided its target market. Demand increased from the 1750s when tea drinking and new dining customs meant that more linen was needed for home use in the polite society in which lawyers played a prominent role.<sup>99</sup> By the turn of the century, Erskine family inventories taken after the death of Lord Alva's widow, Jean Stirling, described an extensive collection of linen items dating back to the 1720s.<sup>100</sup>

Areskine's interest in the potential development of his estate also extended to the mining industry. His eldest brother had successfully mined silver from the family lands at Alva. Areskine may not have been enthusiastic about the potential prospects at Alva but he conceded that if "...one could turn over the Ochils like a bee-hive, something might be got worth while".<sup>101</sup> He re-opened the silver mining operation in 1757 but, instead of finding silver, his workers found a rich source of cobalt. The identity of this valuable commodity was confirmed by the chemist Joseph Black.<sup>102</sup> Black wrote to Areskine's son James in 1759 to report that the quality of the cobalt he had analysed from Alva "seems very good" and might be useful for the decoration of porcelain.<sup>103</sup> One porcelain manufacturer was particularly interested in the find. William Littler (1724–1784) had moved to Scotland sometime in the early 1760s after his factory in Staffordshire failed. He set up a new company at West Pans near Musselburgh where he produced glass and porcelain.<sup>104</sup> Littler was famous for his collaboration

<sup>97</sup> James Erskine bought the former manufactory in 1786. Drumsheugh House was taken down to make way for the development of Alva Street in 1819. John Clark Wilson, "Lands and Houses of Drumsheugh", *Book of the Old Edinburgh Club*, 25 (1945), 71–89 at 86–87.

<sup>98</sup> "Alva Barony Court Book", Alloa Archives MS PD 239/203/1.

<sup>99</sup> Habib and Clark, "Linen Weavers", 537.

<sup>100</sup> NLS, 5114, f. 16: "Inventory of Table Linnen at Drumsheugh 21st July 1797 as given up by Robt Graham Esqr Lady Alva's Executor to the Trustees for James Erskine of Alva's heir". Some of the linen was marked with the initials of Charles Areskine's first wife, Grisel Grierson and dated 1723. The list has thirty-two entries for linen items giving details of 63 tablecloths and 647 napkins.

<sup>101</sup> Charles Areskine, quoted in Stephen Moreton, *Bonanzas and Jacobites: The Story of the Silver Glen* (Edinburgh: National Museums of Scotland, 2008), 51. Alva sits at the foot of the Ochil Hills near Stirling.

<sup>102</sup> Moreton, *Bonanzas*, 51, 53.

<sup>103</sup> Joseph Black, "Letter" (17 Jan. 1759), NLS MS 5098, f. 19.

<sup>104</sup> George R. Haggerty, *Out of the Blue: 18th Century Scottish Porcelain* (Edinburgh: Museum of Edinburgh, 2008), 5.

with Aaron Wedgwood which involved covering white-glazed stoneware with "a brilliant blue ground, which has come to be called 'Littler's blue' or 'Aaron's blue'".<sup>105</sup> Their process required cobalt. Littler wrote to James Erskine sometime after Areskine's death to request a delivery of cobalt to supply his kiln at West Pans.<sup>106</sup> Erskine seems to have provided Littler with the cobalt he needed since Littler was able to conduct a nine day long sale of his wares in Aberdeen in July 1766. His "neat collection of Scots made China, brought here by the manufacturer from West Pans" included "fine Mazzarine blue and gold china, or neatly enamelled".<sup>107</sup> Areskine's library list does not contain any evidence for specific interests in mining or minerals but his copy of the second edition of Chambers's *Cyclopaedia: or, An Universal Dictionary of Arts and Sciences* of 1738 could have supplied him with any information he needed on these subjects.

Areskine and landowners like him wanted to create estates which improved the Scottish economy while increasing their private wealth. Both the second duke of Argyll and his brother, the third duke, were modernising landlords and their activities inspired those in their patronage networks. The dukes developed their Highland lands by building furnaces and factories, promoting innovative agricultural methods, and planting trees.<sup>108</sup> Walter Scott retrospectively gave an idealised account of the second duke of Argyll's activities in *The Heart of Mid-lothian* where his happy tenants enjoyed the latest agricultural and technological advances. The virtuous and resourceful heroine Jeanie Deans is rewarded for her goodness by the duke's offer of residence on and management of "a sort of experimental farm on the skirts of his immense Highland estates" on the peninsula of Roseneath.<sup>109</sup> Modernisation and improvement

<sup>105</sup> David Barker and Sam Cole, "William Littler at Longton Hall", in *Digging for Early Porcelain: The Archaeology of Six 18th-Century British Porcelain Factories*, ed. David Barker and Sam Cole (Stoke-on-Trent: City Museum and Art Gallery, 1998), 4–21 at 40.

<sup>106</sup> Haggerty, *Out of the Blue*, 9.

<sup>107</sup> William Littler, "Advertisement", quoted *ibid*.

<sup>108</sup> Eric Cregeen, "The Changing Role of the House of Argyll in the Scottish Highlands", in *Scotland in the Age of Improvement*, ed. N.T. Phillipson and Rosaline Michison (Edinburgh: EUP, 1996), 5–23 at 16.

<sup>109</sup> Walter Scott, *The Heart of Mid-lothian*, ed. David Hewitt and Alison Lumsden (Edinburgh: EUP, 2004), 377. The duke doubtless wanted his protégée to provide a good example to the other residents of Roseneath. For a less romantic view of Argyll's improvement efforts, see Cregeen, "Changing Role", 17–19. The second duke attempted to fill the island of Tiree with his Campbell dependents starting in 1737. Rival Macleans, already resident on the remote island, blocked successive Argyll attempts at "improvement" with included constructing a harbour and roads, enclosing farms, introducing new crops, training for industries, and

promoted Scottish industry while increasing personal wealth for those able to be involved.

## Poetry

Areskine's miscellanies included works of sacred and secular poetry both ancient and modern. His selection of classical authors included Horace, Homer in Greek and Latin, Virgil in Latin and Italian, and Ovid in Latin.<sup>110</sup> Among Scottish authors composing in Latin are found George Buchanan, David Hume of Godscroft, and the epigrammatist John Leech. Verse in Latin was further represented by the collected works of Nicolaas Heinsius and Johannes Rutgers and the poems of Hugo Grotius. Areskine's appreciation for Latin verse was well known enough for William Lauder to dedicate a collection of sacred poems by Scottish authors, *Poetarum Scotorum muse sacre: sive quatuor sacri codicis scriptorum, Davidis & Solomonis, Jobi & Jeremiae, poëtici libri* to him in 1739.<sup>111</sup>

Poetry was not just read for pleasure in the eighteenth century: it was a force for reform and a source for understanding human nature and history. These two aspects were closely linked to the law and legal understanding. The first of these aspects, reform, is represented in Areskine's library by the theories of the jurist Gianvincenzo Gravina, whom Areskine probably met in Rome. Gravina promoted the practical uses of poetry in his literary theories. Poetry had a special power in Gravina's thinking. "Poets and artists, as bringers of truth, through imagination, into untutored minds" were for him the "founders of civilization". Poetry was the medium for expressing truths.<sup>112</sup> Its form could be used to educate

encouraging fishing. It took 120 years and various levels of success for the dukes of Argyll to overcome the hostility of the residents of Tiree.

<sup>110</sup> Areskine's copies of Horace included Alexander Cunningham's edition of 1721, two English translations and the Foulis edition of 1756. One of the oldest books in Areskine's collection was his edition of Horace edited by Christopher Landino which was published in Venice in 1483.

<sup>111</sup> Lauder had undoubtedly abilities as a Latinist but was a controversial figure. His professed Jacobitism and hatred of John Milton led him to attempt the re-writing of British history according to his political inclinations. See Paul Baines, "Lauder, William (c. 1710-c. 1771)", *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/16121>> accessed 27 July 2010. Areskine also possessed his 1750 *An Essay on Milton's Use and Imitation of the Moderns, in His Paradise Lost* which was dedicated to the universities of Oxford and Cambridge.

<sup>112</sup> Susan M. Dixon, *Between the Real and the Ideal: The Accademia degli Arcadi and its Garden in Eighteenth-Century Rome* (Newark: University of Delaware, 2006), 27.

all members of society. Gravina had achieved international fame with his *Origines iuris civilis* of 1708 which Areskine owned and which took a rational approach to law and saw jurists as the administrators of good government.<sup>113</sup>

Gravina was a founding member of the *Accademia degli Arcadi*, an intellectual discussion group in Rome. The *Accademia*, for which Gravina was a driving force and publications editor, sought to reform literature by encouraging clear, understandable writing. Good writing would then help to educate all classes, but especially the lower classes, about their rights and duties in society.<sup>114</sup> Homer and Dante provided models as authors whose style and morality inspired Gravina's set of ideal poetical rules.<sup>115</sup> Areskine owned Gravina's works of aesthetics, *Della ragion poetica* of 1708 which outlined his theories of poetry and *Della tragedia* of 1715 in which he expressed his theory that tragedy was the ideal form for encouraging the development of civil society, as well as his legal works.<sup>116</sup>

As a visiting professor and legal scholar to Rome in May 1710, Areskine may have been invited to *Accademia* meetings. Gravina was aware of opportunities for book publishing outside Italy and especially at Leipzig where his *Origines iuris civilis* had already been published. In a letter of 26 July 1710 he mentioned "della prosperia che in contra oltre le Alps, utlissima allo stampatore de Lipsia".<sup>117</sup> If he knew Areskine was considering a visit to Germany, Gravina may have sought him out as a trustworthy courier. Areskine's decision to enter into public life when he returned to Scotland after his grand tour may have been in part based on a Gravina-inspired wish to reform society by playing an active role in legal practice: he may also have found intellectual support for his change in career.

Poetry was not just a potential agent of reform: it could also be used to study human nature and history. Hugh Blair summarised the unique attributes of the form in 1763, saying

...the most natural pictures of ancient manners are exhibited in the ancient poems of nations. They present to us...The history of human imagination and passion. They make us acquainted with the notions and

<sup>113</sup> Harold Samuel Stone, *Vico's Cultural History: The Production and Transmission of Ideas in Naples, 1685–1750* (Leiden: Brill, 1997), 202.

<sup>114</sup> Ibid. 200, 202.

<sup>115</sup> Gino Bedani, "Gian Vincenzo Gravina (1664–1718)", in *The Oxford Companion to Italian Literature*, ed. Peter Hainsworth and David Robey (Oxford: OUP, 2002), 277. Areskine owned works by both.

<sup>116</sup> Ibid.

<sup>117</sup> Gianvincenzo Gravina, *Curia Romana e Regno di Napoli: Cronache politche e religiose nelle lettere a Francesco Pignatelli*, ed. Antonio Sarubbi (Naples: Guida Editori, 1972), 327.

feelings of our fellow-creatures...discovering what objects they admired, and what pleasures they pursued....<sup>118</sup>

Although he was specifically writing of the “Ossian” poems which he believed were the authentic works of a prehistoric Scottish bard, Blair’s ideas about the revelations poetry can offer about society stand. Poetry was a complement to history because it could help in understanding human behaviour and human responses over time. This was why eighteenth-century readers wanted to believe that Ossian and Fingal were real prehistoric Scots. They craved an ancient tradition of poetry that could put Scots on a level with the Greeks and Romans of the classical past whose literature had defined so much of learned culture. Ossian offered a chance to reach back into history by the means of poetry to restore a lost past. Areskine owned both *Fingal, An Ancient Epic Poem* and Blair’s validation of it.

The final book listed in Areskine’s 1731 manuscript is Alexander Pope’s satirical poem *The Dunciad*. This work did not seek to reform society or to restore history. Pope’s mock-epic incorporates classical allusions and forms while creating something new. The edition of 1729 that Areskine owned included extensive notes on the “Imitations of the Ancients...to gratify those who either never read, or may have forgotten them”.<sup>119</sup> A reader like Areskine did not need these translations and keys to classical allusions. His education meant that he would understand the jokes and his library stocked the relevant texts. That Pope included these references shows how poetry had changed from an elite pursuit requiring a traditional education which included classical languages and history to a form that anyone who could read English could enjoy. Gravina and the promoters of polite learning would have approved of the sentiment if not the poem’s disrespectful attitude about the power and dignity of poetry. *The Dunciad* was wry and sarcastic but it articulated some of the intellectual concerns of learned society in eighteenth-century Britain while inviting a new set of readers to share the pleasures of poetry. Given his general interests it is fitting that Areskine’s “last composition was a prayer in classical Latin for his king and country”.<sup>120</sup> History, religion, improvement, and poetry were thus all addressed in Areskine’s last days as they had been throughout his life. Areskine’s interest in these areas confirms his participation in the Scottish Enlightenment.

<sup>118</sup> Hugh Blair, *A Critical Dissertation on the Poems of Ossian, the Son of Fingal* (London: Printed for T. Becket and P.A. De Hondt, at Tully’s-Head, in the Strand, 1763), 1. Areskine’s copy was probably one of the last books he bought before his death in April 1763.

<sup>119</sup> Alexander Pope, “Advertisement”, in *The Dunciad, Variorum. With the Prolegomena of Scriblerus* (London: Printed for A. Dob, 1729).

<sup>120</sup> John Ramsay of Ochtertyre, *Scotland and Scotsmen of the Eighteenth Century*, ed. Alexander Allardyce, 1 (Edinburgh: William Blackwood, 1888), 110.

## The Scottish Gentleman's Library

Cicero...stopt a while...at *Antium*, where he had lately rebuilt his house, and was now disposing and ordering his library, by the direction of Tyrannio.... *Atticus lent him two of his Librarians to assist his own*, in taking Catalogues, and placing books in order; which he calls *the infusion of a soul into the body of his house*.<sup>1</sup>

### Keeping Books

Book collectors had an important practical matter to consider. Areskine's library of nearly 1,300 books was of a considerable enough size for him to need to work out where and how to keep it. The early eighteenth-century Scottish library was more than a place for storing books: it could be at the very heart of a gentleman's social life. Although none of Areskine's own libraries survive, we can consider some of the library spaces which were developed by his contemporaries, including those created by his patron. Scottish legal professionals came to be noted not only for the quality of the libraries they kept but for the statements they made in storing them and by sharing access to them. That Areskine's 1731 list acted as a shelf list and his books were identified with shelf marks demonstrates that the books were kept in order on shelves and that they were organised to make them easily accessible for their owner.

Areskine had a multi-disciplinary private library any *literatus* could be proud of but, in the sociable world of early eighteenth-century Britain, it was not enough to collect and record a personal collection. Private libraries were useful tools for cementing political alliances and developing family legacies. The eighteenth-century Scottish gentleman's library was a social space. Institutional libraries like the Advocates Library and private libraries were places to meet, converse, and share books and ideas. Early eighteenth-century Scottish book collectors built libraries to house, display, and share their books.

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<sup>1</sup> Conyers Middleton, *The History of the Life of Marcus Tullius Cicero*, 2 (London: Printed for W. Innys, at the West-End of St Paul's, 1741), 57.

## The Earl of Ilay's Libraries

A major book collector who had close personal links with Charles Areskine was his political patron and friend, Archibald Campbell, earl of Ilay and third duke of Argyll. Campbell, an ally of Sir Robert Walpole and the manager of Scottish politics from 1725 to 1743 and again from 1747 to his death in 1761, controlled a vast patronage network.<sup>2</sup> Although his origins were noble, Ilay's library had much in common with the working collections of physicians and advocates of his age. Born and raised in England and educated at Eton, he studied at the University of Glasgow before travelling to Utrecht to study law.<sup>3</sup> Ilay was made Lord Justice-General in the judiciary of Scotland in 1711 and used his right to sit as an extraordinary lord of session for the remaining fifty years of his life.<sup>4</sup> His knowledge of medicine was also impressive and he was awarded an MD by King's College, Aberdeen and made an honorary Fellow of the Royal College of Physicians in 1758.<sup>5</sup> His library contained books that reflected his many practical interests and concerns.

By 1758 Ilay's library held at least 8,951 titles in more than 2,177 volumes.<sup>6</sup> The collection has not survived: Ilay's nephew, the earl of Bute, bought it after his death but it was later destroyed in a house fire. Only the catalogue Ilay had printed in 1758 now remains.<sup>7</sup> This soberly presented document only contains

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<sup>2</sup> Roger Emerson, "Catalogus Librorum A.C.D.A., or, The Library of Archibald Campbell, Third Duke of Argyll (1682–1761)", in *The Culture of the Book in the Scottish Enlightenment: An Exhibition*, ed. Paul Wood (Toronto: Thomas Fisher Rare Book Library, 2000), 13–39 at 13. For Ilay's dominant role in Scottish politics see John Stuart Shaw, *The Management of Scottish Society, 1707–1764: Power, Nobles, Lawyers, Edinburgh Agents and English Influences* (Edinburgh: John Donald, 1983) esp. 43–48 and Alexander Murdoch, "The People Above": Politics and Administration in Mid-Eighteenth-Century Scotland (Edinburgh: John Donald, 1980), 7–8.

<sup>3</sup> Shaw, *Management*, 43.

<sup>4</sup> Alexander Murdoch, "Campbell, Archibald, Third Duke of Argyll (1682–1761)", ODNB (Oxford: OUP, Sept 2004; online edn, Oct. 2006) <<http://www.oxforddnb.com/view/article/4477>> accessed 18 May 2010. Campbell was known as the earl of Ilay from 1706 to 1743 when he inherited his brother's title and became the third duke of Argyll. He will be referred to by his earlier title to avoid confusion.

<sup>5</sup> Emerson, "Catalogus", 29.

<sup>6</sup> Roger L. Emerson, *An Enlightened Duke: The Life of Archibald Campbell (1682–1761), Earl of Ilay and 3rd Duke of Argyll* (Kilkerran: Humming Earth, 2013), 105.

<sup>7</sup> *Catalogus Librorum A.C.D.A.* (Glasgow: Robert and Andrew Foulis, 1758). Areskine's 1731 manuscript catalogue does not list Ilay's catalogue but a copy was offered for sale in the first of a series of sales of Areskine and his family's books in 1850. Thomas George Stevenson, *Bibliotheca selecta, curiosa et rarissima. Part first of a general catalogue of miscellaneous English and foreign books, including a portion of the libraries of the Hon. Charles Erskine of*

a list of books: there is no dedicatory material or explanation for the motivation for its creation. Ilay's library was a practical collection which he used in his various roles as judge, politician, and patron of the arts and sciences. The collection was catalogued by subject with "history, followed by mathematics, medicine, the ancient writers (including their historians), philology, miscellaneous, jurisprudence, philosophy, public law, and theology".<sup>8</sup> The legal sections of the collection were complete enough to function as the "working library of a British lawyer" with books on natural law, Roman, canon, criminal, and local customary law, law dictionaries and style books, and collections of decisions.<sup>9</sup> These legal texts were available to Ilay's political allies of the legal profession from Scotland when they came to London to take their places as Westminster MPs or to act professionally in the Court of Appeal in the House of Lords. It therefore comes as no surprise to find that when Areskine was in London he took lodgings or had his post delivered to addresses close to Ilay and his Argyll House library. Throughout the 1730s, for example, Areskine stayed at addresses at Little Marlborough Street, Golden Square, and Poland Street all of which are within a few minutes' walk of the site of Argyll House.<sup>10</sup> Areskine used Ilay's library as a place to deal with his correspondence and to transmit Ilay's wishes about Scottish matters. A letter from "the Liberary", for example, which

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*Tirnwald, Lord Justice-Clerk: James Erskine, Baron of the Exchequer, afterwards Lord Barjarg and Alva; and James Erskine, Esq. of Aberdona* (Edinburgh: Thomas George Stevenson, 1850), 29. Areskine's friend and fellow Ilay client, John Maule, Baron Maule, also had a copy: it survives in the Signet Library, Edinburgh, and has his signature and bookplate. Ilay guided his nephew the earl of Bute's education and this had included legal studies in the Netherlands. John W. Cairns, "Attitudes to Codification and the Scottish Science of Legislation, 1600–1830", *Tulane European and Civil Law Forum*, 22 (2007), 1–78 at 30.

8 Emerson, "Catalogus", 21; Emerson, *Enlightened Duke*, 108. For more details about and analysis of the books in Ilay's library see *Ibid.* 110–29.

9 Emerson, "Catalogus", 27.

10 See e.g. NLS MS 16560, f. 239 for lodgings in "little Marlebrough Street" in 1735; NLS MS 5074, f.64 for a letter sent to him "at Mr Milton's peri-wig maker in Golden Square" in 1738, and NLS MS 5074, f. 111 and MS 5074, f. 84v for two letters sent to him at "Mrs Shaw's in Poland Street" in 1739. For the proximity of these addresses with Argyll House see John Rocque, *The A to Z of Georgian London*, ed. Ralph Hyde (London: London Topographical Society, 1982), map 10 at Ba where the footprint of Argyll House and its library is also visible. Areskine also received post at "Forrest's Coffee House near Charing Cross" in 1739 (NLS MS 5074, f. 79). Forrest's Coffee House was near Whitehall and was popular with MPs. For a map showing its location see Markman Ellis, "Coffee-house Libraries in Mid-Eighteenth-Century London", *Library*, 7th ser., 10 (2009), 3–40 (p. 16). Areskine also received post at the House of Commons. See e.g. MS 5074, f. 101.

Areskine sent to Lord Milton dated 24 February 1735 passes on Ilay's wishes for the management of upcoming elections.<sup>11</sup>

Books and booksellers played roles in attracting the favour of a powerful political bibliophile like Ilay. Booksellers could act as go-betweens in the early modern quest for patronage. Books could be used as tools for attracting patronage and book collectors in influential positions could expect to receive them as gifts. When he wrote to Areskine in 1748 to ask advice about publishing a potentially controversial piece on the Protestant succession in a forthcoming collection of essays, the philosopher and historian David Hume also mentioned that he had:

...order'd the Bookseller [Andrew Millar] to send you two Copies of the whole after they are printed: One I desire you to accept as a Mark of my Regard; and another to present, in my Name to the Duke of Argyle.... I have a Regard for his Grace, & I desire that this Trifle may be considered as a Present, not to the Duke of Argyle, but to Archibald Campbell, who is undoubtedly a Man of Sense & Learning.<sup>12</sup>

Ilay may have had as many as five different book collections at his various residences but he kept his largest library at his house in London. The catalogue printed in 1758 almost certainly records Ilay's London library.<sup>13</sup> The inconvenient design of Argyll House, which had two entrances via Marlborough Street and Argyll Street, seems to have been inspired in part by Ilay's need to accommodate his growing book collection. Ilay had two subsequent libraries at Argyll House. The first was at the end of his garden and a second larger version expanded the first to connect the library with the main house. The resulting library was a large galleried room which had dimensions of ninety by twenty feet and featured two bow windows which overlooked what remained of the still-large garden and which projected out another seven feet each. The bow window wall had three further windows between the bow windows: the entire wall therefore was designed to let light into the library. Two fireplaces faced the bow windows and there was a gallery at each end of the room.<sup>14</sup> Completed in

<sup>11</sup> NLS MS 16560, f. 242.

<sup>12</sup> David Hume, "Letter to Charles Erskine, Lord Tinwald (13 Feb. 1748)", in *The Letters of David Hume*, 1, ed. J.Y.T. Greig (Oxford: Clarendon, 1932), 113. Although they both had other books by Hume, neither Areskine nor Ilay included the 1748 edition of Hume's *Essays* in their library catalogues. Ilay had the 1752 edition of *Political Discourses* and Areskine had the earlier edition of the *Essays* of 1741.

<sup>13</sup> Emerson, *Enlightened Duke*, 105.

<sup>14</sup> "Argyll Street Area", *Survey of London: Volumes 31 and 32: St James Westminster, Part 2* (1963) <<http://british-history.ac.uk/report.aspx?compid=41478&strquery=argyll%20house>> accessed

1742, the new library doubled the size of the house and its owner thought it "one of the finest rooms in London".<sup>15</sup> The library provided office or meeting space for Ilay and his visitors as a letter Areskine's son Charles wrote to his brother "Jemmie" in 1746 shows:

I write this from the Libray [sic] where I have just mentioned your affair; & the upshot of Conference is that...it will be proper for you to secure as Many Votes as possible, in case there should be an Alteration. ...The Duke says He will write very readily to Principal Campbell for the West-Country & to the sheriff of Argleshire.<sup>16</sup>

Ilay used his library for meetings, discussions, political planning, and letter writing as well as a place for storing and referring to books. The multi-purpose approach to library design at Argyll House was typical of its time. Lord Chesterfield thought his library, completed in 1749, was the best room in his London house and it was his preferred place to receive visitors.<sup>17</sup> Ilay's galleried library was a focal point in his London life and his friends came to say they were "calling at the Library" when they were going to pay him a visit.<sup>18</sup> Ilay's and Chesterfield's libraries represent a trend in the mid-eighteenth century since by then the "library' had become a focal living and entertaining room for much of the English nobility and upper gentry".<sup>19</sup> Ilay's collection, like that of

<sup>12</sup> May 2010; Emerson, "Catalogus", 15. For Ilay's building projects in London, Whitton and "The Whim" in Peebleshire see Mary Cosh, "Lord Ilay's Eccentric Building Schemes: Two Dukes and Their Houses, 2", *Country Life* (20 July 1972), 142–45. None of these survive but all included libraries in their designs. Ilay did not include a specific library room at his Inverary Castle. Murray C.T. Simpson, "Housing Books in Scotland before 1800", *Journal of the Edinburgh Bibliographical Society*, no. 4 (2009), 11–31 at 18.

<sup>15</sup> Archibald Campbell, quoted in Emerson, *Enlightened Duke*, 103.

<sup>16</sup> Charles Erskine, "Letter" [1746], NLS MS 5075, fols. 212–13. The younger Charles was part of Campbell's network in his own right. In 1748, the duke wrote to Lord Milton instructing him to draft a bill along with "Tinwald and Elches and Gen Bland or any of you...and send to me alone. I shall then revise it and cook it farther up to an English stile and taste with young Charles...". Archibald Campbell, "Letter" (20 Feb. 1748), NLS MS Saltoun, quoted in John Stuart Shaw, *The Management of Scottish Society, 1707–1764* (Edinburgh: John Donald, 1983), 176.

<sup>17</sup> M.H. Port, "Library Architecture and Interiors", in *The Cambridge History of Libraries in Britain and Ireland*, 2: 1640–1850, ed. Giles Mandelbrote and K.A. Manley (Cambridge: CUP, 2006), 459–78 at 472.

<sup>18</sup> Cosh, "Lord Ilay's Eccentric Building Scheme", 143.

<sup>19</sup> James Raven, "Debating Bibliomania and the Collection of Books in the Eighteenth Century", *Library & Information History*, 29 (2013), 196–209 at 198.

book collectors from the professional classes, was more than a background decoration for his favourite social space. His books were available to his visitors and his knowledge of their contents was renowned. Ilay and his contemporaries saw their libraries just as Cicero had done many centuries before: their libraries gave their houses “the infusion of a soul”.

### Storing Books and Building Libraries: Private Libraries in Scotland

Over the course of the eighteenth century, the purpose of the private library changed, and its form evolved to reflect this. At the beginning of the century, individuals' libraries reflected their personal tastes and their reading habits. By the end of the century, the private library became a more public room and the

gentleman's library shelves were...exposed to the inquisitive gaze of his guests: he now has to show that he has got all the right books, that is to say, all the fashionable books, whether or not he has actually read them, or wants to read them.<sup>20</sup>

The move towards having a dedicated room for storing books seems to have been a late seventeenth-century innovation in Scotland and it was not until John Slezer's engraving of the plan for Thirlestane Castle of c. 1690 that a Scottish country house plan included a room designated as a library. The image shows alterations made for the Duke of Lauderdale in the 1670s. As Murray C.T. Simpson points out, the development of Thirlestane Castle was concurrent with Lauderdale's building works at Ham House near London which also included a designated library room.<sup>21</sup> The library at Ham House was built from 1672 to 1674 to replace an older library room to accommodate Lauderdale's growing collection and it featured 572 feet of shelving. Lauderdale's books were

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<sup>20</sup> T.A. Birrell, “Reading as Pastime: The Place of Light Literature in Some Gentlemen's Libraries of the 17th century”, in *Property of a Gentleman: The Formation, Organisation and Dispersal of the Private Library 1620–1920*, ed. Robin Myers and Michael Harris (Winchester: St Paul's Bibliographies, 1991), 113–31 at 129.

<sup>21</sup> Simpson, “Housing Books”, 13. John Newman describes the Ham House library thus: “Cedar bookshelves line three walls almost to their full height, and in one corner, close to the door to the stairs, is a large built-in writing desk with numerous drawers and a broad flap which can be raised and lowered. The room was clearly intended primarily as a study, not for display”. John Newman, “Library Buildings and Fittings”, *The Cambridge History of Libraries in Britain and Ireland*, 2: 1640–1850 ed. Giles Mandelbrote and K.A. Manley (Cambridge: CUP, 2006), 190–211 at 209.

sold between 1688 and 1692.<sup>22</sup> It is worth noting that the future bibliophile Archibald Campbell was born at Ham House and may have spent his earliest years there.<sup>23</sup>

The idea that the private library became more public needs to be considered in a specific Scottish context. The creators of early eighteenth-century library rooms in Scotland maintained that their spaces were separate from their households even as they sought to share their collections with their guests. The Scottish country house library was paradoxically “often unusually architectural and grand while...it was often the most comfortable and welcoming room in the house”.<sup>24</sup> Scottish country houses libraries tended to take one of two forms. They sometimes featured “skied” libraries in their top floors.<sup>25</sup> An important example of a skied library survives at Arniston House which William Adam designed and built for Robert Dundas (1685–1753) between 1726 and 1732. Dundas was a lawyer, rival, and cousin of Areskine. He became Lord President in 1748. In the late 1720s, he was politically in opposition and he had a growing family. These factors may have inspired his remodelling of the family home at Arniston. The new library was one of the most important rooms in the house and was positioned above the hall.<sup>26</sup> The “high library” at Arniston with its upper floor position proved popular and Adam included similar plans for the library in his designs for Traquair House in Peeblesshire, House of Dun near Montrose, and Haddo House in Aberdeenshire.<sup>27</sup> The skied library offered a quiet working space for the gentleman’s reading and study away from the noise of household.

Although they were popular, skied libraries were not the only form of library space created in early eighteenth-century Scotland. Adam designed elaborate pavilion libraries which were never built for Hopetoun House near Edinburgh, Yester House near Gifford, and Duff House near Banff.<sup>28</sup>

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<sup>22</sup> Christopher Rowell and others, *Ham House, Surrey* (London: National Trust, 1995), 30.

<sup>23</sup> Murdoch, “Campbell, Archibald”; Emerson, *Enlightened Duke*, 20.

<sup>24</sup> Ian Gow, “The Most Learned Drawing Room in Europe?: Newhailes and the Classical Scottish Library”, in *Visions of Scotland's Past: Essays in Honour of John R. Hume*, ed. Deborah C. Mays, Michael S. Moss and Miles K. Oglethorpe (East Linton: Tuckwell, 2000), 81–96 at 81.

<sup>25</sup> Ibid.; Newman, “Library Buildings”, 211.

<sup>26</sup> Mary Cosh, “The Adam Family and Arniston”, in *Architectural History, 27: Design and Practice in British Architecture: Studies in Architectural History Presented to Howard Colvin* (1984), 214–30 at 215, 219.

<sup>27</sup> Pat Wigston, “A Grain of Truth”, *Architectural Heritage*, 12 (2001), 13–26 at 13.

<sup>28</sup> Ibid.; Simpson, “Housing Books”, 16. Adam’s planned library and leisure pavilion at Hopetoun House became a large ballroom instead.

The introduction of pavilion libraries into Scotland may reflect an English influence. The English fashion was for house libraries to be “on the periphery of the plan” or “sited in a pavilion”.<sup>29</sup> The duke of Lauderdale’s libraries at both Thirlestane and Ham featured this placement for his libraries. The libraries built by the earl of Ilay and the physician Richard Mead, a close friend of Areskine’s brother Robert, in London were developed as after-thoughts which grew from outbuildings in their gardens. The earl of Sunderland helped to entrench this fashion when he built a library wing for his London house which was 150 feet long, had five apartments, and had shelving fourteen shelves high along its walls in 1719.<sup>30</sup>

An example of an early eighteenth-century Scottish pavilion library survives at Newhailes near Edinburgh. The Newhailes library was constructed by an unknown architect between 1718 and 1722 for the Dalrymple family. The library at Newhailes seems to have been designed to function as a working space: the large windows let in the light from almost floor to ceiling on one side of the room and the oak-lined walls originally featured little decoration.<sup>31</sup> Its creator, Sir David Dalrymple (c. 1665–1721), was the youngest son of Viscount Stair and a notable book collector. As Areskine would later do, Dalrymple studied abroad in the Low Countries, had a career in public life, and was active in the legal establishment. He bought the house that he renamed Newhailes in 1709.<sup>32</sup> The library wing he commissioned doubled the size of the house and every inch of the library’s wall space was designed to hold books. Dalrymple’s descendants developed the collection but by the late eighteenth century the room had lost its function as a serious study space and it acted as the family’s drawing room.<sup>33</sup>

The skied library at Arniston and the pavilion library at Newhailes were both designed to hold the large book collections created by legal families. There were more than 4,000 volumes at Arniston by 1819 and the still extant seventeen-foot tall adjustable oak shelving at Newhailes can hold about

<sup>29</sup> Newman, “Library Buildings”, 211.

<sup>30</sup> Katherine Swift, “The Formation of the Library of Charles Spencer, 3rd Earl of Sunderland (1694–1722): A Study in the Antiquarian Book Trade”, D.Phil. thesis (University of Oxford, 1986), 37.

<sup>31</sup> Gow, “Most Learned”, 84–85, 88.

<sup>32</sup> John W. Cairns, “Legal Study in Utrecht in the Late 1740s: The Education of Sir David Dalrymple, Lord Hailes”, in *Summa eloquentia: Essays in Honour of Margaret Hewett* (Unisa: University of South Africa, 2002), 30–74 at 35.

<sup>33</sup> Gow, “Most Learned”, 85, 94. For the room’s transformation from library to drawing room, see also Robert L. Betteridge, “I May Perhaps Have Said This’: Samuel Johnson and Newhailes Library”, *Scottish Literary Review*, 6 (2014), 81–90 at 83.

7,000 books.<sup>34</sup> Sir David Dalrymple may have had more than 5,000 books by the time of his death.<sup>35</sup> Large libraries like these required special places to store them but a collection of the size described in Areskine's 1731 manuscript would have fitted on shelving of a much smaller scale. It is worth remembering, however, that Areskine's list does not include all of the books he owned and that other members of the family, including his wife who listed 168 titles in her own library catalogue of 1729, needed places to store and study their own collections.<sup>36</sup> Despite the survival of these catalogues, it is impossible to say how many books Areskine and his family possessed or how much space they would have needed to store them.

The difference in the location within the houses for the libraries at Arniston and Newhailes shows that there were "two separate ideas going on simultaneously" in early eighteenth-century Scotland regarding the placement of the private library within the home.<sup>37</sup> Both arrangements agreed, however, that the gentleman's library should be in a space away from the noise of the household. John Clerk of Penicuik combined the trends by choosing to place his library in the "upper part of the house" at Penicuik while having in "the lower part of the house...a chamber fitted up with my private and domestic things, and consecrated to study and quiet, that it, remote from the noise of my children and servants" where he kept "many books to be read".<sup>38</sup> Clerk's wish to share his intellectual treasures inspired this description of his scholarly arrangements. He wrote this description of his scholarly arrangements to his friend the Leiden medical professor Hermann Boerhaave whom he very much

34 Wigston, "Grain of Truth", 13; Simpson, "Housing Books", 16. Arniston has retained its books but they are now in a different part of the house. The former library now very elegantly displays china and porcelain. The Newhailes books were allocated to the National Library of Scotland in 1978 in lieu of death duties. Gow, "Most Learned", 96.

35 Robert L. Betteridge, "A Library of Books Shall be the Subject of My Meditations: The Library of the Dalrymples of Newhailes", *Journal of the Edinburgh Bibliographical Society*, 8 (2013), 33–71 at 62.

36 Copies of books with Areskine provenances, including his copies of Adam Smith's *The Theory of Moral Sentiments* (Edinburgh, 1759) and Christopher Irvine's *Historiae Scoticae nomenclatura Latino-vernacula* (Edinburgh, 1682), are not listed but they contain his bookplate. It is not known why these were not recorded but perhaps they belonged to a separate collection for which a catalogue has not survived. For Grisel Areskine's books see NLS 5161 and below.

37 Simpson, "Housing Books", 16.

38 John Clerk, "Description of the Estate and Old House at Penicuik, in a Letter from the Baron to Boerhaave", trans. T. Graves Law, in *Memoirs of the Life of Sir John Clerk of Penicuik, Baronet Baron of the Exchequer, Extracted by Himself from his Own Journals, 1676–1755*, ed. John M. Gray (Edinburgh: EUP, 1892), 237.

wanted to welcome to Scotland for a visit. He hoped his library and the chance to use it would prove to be sufficient enticements. At Newhailes, a bay connecting the original house with the library served as offices for clerks: this helped shield the library from the rest of the house's activities.<sup>39</sup>

Areskine commissioned William Adam, the favourite architect of members of Edinburgh's elite legal establishment, to build him a house at Tinwald in Dumfriesshire in 1738.<sup>40</sup> Tinwald House was small compared to Adam's previous project Arniston House and his subsequent commission at the House of Dun.<sup>41</sup> Building a country house was a way for Areskine to "improve" his estate while demonstrating his taste. Adam worked with his patrons at every stage of his projects from design to construction. Areskine's personal level of architectural knowledge is uncertain and his library manuscript lists only a small selection of books about architecture. These included a text by the Italian architect Sebastiano Serlio in folio which was bound with a work by Jean Cousin on the mathematics of perspective.<sup>42</sup> However, the travel guides he picked up while on his grand tour contained descriptions and illustrations of the great buildings of the continent. It is notable that all of these are described as "Cum Figuris" in his catalogue.<sup>43</sup> Areskine would have been aware of the Palladian style, based on continental models that Adam favoured.

Adam also planned houses for several of Areskine's colleagues and contemporaries including Robert Dundas's house at Arniston and Sir John Clerk of Penicuik's Mavisbank. Adam's plans for homes at Arniston House, the House of Dun, Hopetoun House, and Duff House included spaces for libraries of varying sizes. At the time Tinwald House was being built, Areskine had two sons who

39 Betteridge, "Library of Books", 40–41.

40 John Gifford, *William Adam, 1689–1748: A Life and Times of Scotland's Universal Architect* (Edinburgh: Mainstream, 1989), 29; A.A. Tait, "William Adam and Sir John Clerk: Arniston and 'The Country Seat'", *Burlington Magazine*, 111 (Mar. 1969), 132–41 at 132, 135.

41 James Macaulay, *The Classical Country House in Scotland, 1660–1800* (London: Faber and Faber, 1987), 74. Adam designed the House of Dun for Areskine's kinsman David Erskine, who used the judicial title Lord Dun, with the advice of their exiled relative the earl of Mar who was a talented architect. Murray G.H. Pittock, "Erskine, David, Lord Dun (*bap.* 1673, *d.* 1758)", *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/8849>> accessed 5 Sept. 2011.

42 It is important to note that both of these books have mathematical contents which may have interested Areskine.

43 See e.g., Famiano Nardini, *Roma antica* (Rome, 1704); Lorenzo Pignoria, *Le origini di Padova* (Padua, 1625); Pompeo Sarnelli, *La guide des étrangers curieux de voir les choses plus memorables de Poussol, et de ses environs* (Naples, 1702); and Pompeo Sarnelli, *La vera guida de forestieri, curiosi di vedere...le cose più notabili della regal città di Napoli e del suo... distretto, ritrovata colla lettura de'buoni scrittore* (Naples, 1713).

were finishing their educations and starting their own legal careers. The examples of the libraries created by the likes of his legal colleagues the Dundases and the Dalrymples cannot have escaped his notice. If he was typical of his profession and class, it is likely that Areskine would have wanted to include a library since the “country house library could be viewed as an educational investment for the heirs of a dynasty”.<sup>44</sup>

Areskine later recalled that when he

came to the Resolution of building a House at Tinwal [sic], he met with Mr. Adams [sic]...and some others of his Friends, and when they had resolved the size of the House, he desired Mr. Adams to make out a Plan for him, which accordingly Mr. Adams made out and delivered to him.<sup>45</sup>

Two of the plans Adam made for “Tindwell House” were reproduced in *Vitruvius Scoticus*, a retrospective collection of Adam’s work published in 1812. Plate 153, “The West Front of Tindwall House toward the Court”, shows an elevation of the house which features Areskine’s coat of arms in the pediment. The main block of the house is flanked by pavilions.<sup>46</sup> Although it seems the masons made a start on one of them, the pavilions were never completed.<sup>47</sup>

After he approved Adam’s plan, Areskine depended on associates and agents to oversee the building works at Tinwald House. When he was thinking of visiting Dumfriesshire in April 1739, Clerk wrote to Areskine to offer his services as a messenger: “if I go I’ll pay a visite to your Masons if you have any commands for them”.<sup>48</sup> Later in the same month, John Hope reported on a visit to the site with the architect: “M<sup>r</sup>. Adam...join’d me, & we went to Drumfries [sic] together...to Tindwall, where we spent a good Part of the Day in viewing what is already done & concerning all the necessary measures for finishing the

44 Gow, “Most Learned”, 81.

45 *Depositions of Witnesses, &c. In the Cause William Adams Architect in Edinburgh; Against William Lord Braco; Taken by Virtue of an Act and Commission of the Lords of Council and Session* (21 Mar. 1743), 28.

46 William Adam, *Vitruvius Scoticus; Being a Collection of Plans, Elevations, and Sections of Public Buildings, Noblemen's and Gentlemen's Houses in Scotland: Principally from the Designs of the Late William Adam, Esq. Architect* (Edinburgh: Printed for Adam Black, and J. & J. Robertson, Edinburgh; T. Underwood, and J. Taylor, London, [1812]), plates 152–53.

47 “...a Part of the Pavilions having been carried some length, as to...which there had been no previous Agreement”. *Depositions*, 28.

48 John Clerk, “Letter” (5 Apr. 1739), quoted in John Gifford, *William Adam, 1689–1748: A Life and Times Universal Architect* (Edinburgh: Mainstream, 1989), 123.

Work...".<sup>49</sup> Both visitors were patrons and friends of Adam. Clerk was more a partner than a client when the two designed Mavisbank and Clerk's country house ideals influenced Adam's design for Arniston.<sup>50</sup> During the 1730s, Hope and Adam completed their plans for Hopetoun House. These included a south pavilion which would contain a library, study, laboratory, and billiard room.<sup>51</sup> Both Clerk and Hope were talented amateur architects in their own rights: Areskine was fortunate to have their help and he readily turned to his friends throughout the building process. When he needed advice about the costs of the house, Areskine admitted that "how far as Prices were equal, [he] was no Judge, but submitted it to the Opinion of others, acquainted in these matters, and was determined by it".<sup>52</sup>

Adam fortunate in his interactions with Clerk, Hope, and Areskine: he did not enjoy smooth relations with all of those who employed him. His relationship with William Duff, Lord Braco, turned sour when Braco accused Adam of overcharging him for stone and labour used to build Duff House in the 1730s. Braco also objected to Adam's method of sending delegates to supervise projects instead of managing them himself. A protracted legal battle followed which was resolved in 1748 when none other than pleased client Lord Tinwald made the decree arbitral which found in Adam's favour.<sup>53</sup>

Areskine could have planned either a skied or a pavilion library at Tinwald House. As the plans for it printed in *Vitruvius Scoticus* show, Adam's original design for the house included pavilions on each side. These were never built. The Tinwald House plans, however, do not include descriptions of what each room was to be used for and there are no obvious clues from the shapes of the rooms. Any of the rooms on the plan for the attic floor of the house, which was

<sup>49</sup> John Hope, "Letter" (11 Apr. 1739), quoted in John Gifford, *William Adam, 1689–1748: A Life and Times of Scotland's Universal Architect* (Edinburgh: Mainstream, 1989), 123–24.

<sup>50</sup> Tait, "William Adam and Sir John Clerk", 132.

<sup>51</sup> Alistair Rowan, "The Building of Hopetoun", *Architectural History, 27: Design and Practice in British Architecture: Studies in Architectural History Presented to Howard Colvin* (1984), 183–209 at 193.

<sup>52</sup> *Depositions*, 28.

<sup>53</sup> A selection of papers about the case dating from 1743 is preserved in the NLS at AB.10.210.03(1–10). William R.M. Kay, "What's His Line: Would the Real William Adam Please Stand Up?: Some Recent Research Discoveries", in *Architectural Heritage: Journal of the Architectural Heritage Society*, 1: *William Adam* (Edinburgh: EUP, 1990), 49–61 at 56. Adam's original plan for Duff House included a gallery which was later developed into a library. This space may have been a "fail-safe against the late-arrival of the wings" which were planned for the house. Ian Gow, "The History of Duff House", *Duff House* (Edinburgh: National Galleries of Scotland, 1995), 29–43 at 36.

built, would have easily been large enough to accommodate a library of the size enumerated in the 1731 manuscript catalogue. It is possible that Adam and Areskine were planning for one of the pavilions at Tinwald to form a library like that at Newhailes or the one projected for Hopetoun but this can only be a guess. In the event, Areskine had to sell his new house and estate at Tinwald in 1753 to finance the purchase of his ancestral estate at Alva from his nephew to keep it in the family.<sup>54</sup> If there was ever any built-in shelving or other physical evidence for an early eighteenth-century private library at Tinwald House it has been lost: Tinwald House was gutted by a fire in 1946 which destroyed the Adam interior.<sup>55</sup>

Any of Areskine's other houses could also have accommodated his book collection. A plan of Alva House dating from 1789 shows that it had a large gallery on its third floor.<sup>56</sup> If he had decided to use Ilay's Argyll House library in London as a model, Areskine could have created a long library at Alva House without needing to do any building work. His large town house in Edinburgh in Mylne Square, meanwhile, consisted of the second and third floors on the west side of the square.<sup>57</sup> Since this was his residence when the court was in session, it is likely that Areskine kept his law books, or a selection of them, there. Areskine bought a suburban retreat at Drumsheugh near Edinburgh in 1755. The house there was big enough to be described as a mansion house.<sup>58</sup> Books were certainly kept at Drumsheugh later in the century and it is likely that Areskine kept the bulk of his collection there after 1755. An inventory taken after the death of James Erskine's widow, Jean Stirling, in 1797 shows that the house at Drumsheugh had a room designated as a library which had a closet attached and which was furnished with a "Mahogany book press with drawers", an "Old Cabinet and Charter Chest", a "Telescope and Microscope", an "Ebony Cabinet",

54 Cairns, "Origins", 345.

55 John Gifford, *Dumfries and Galloway* (London: Penguin Books; Buildings of Scotland Trust, 1996), 552. Simpson and Brown Architects restored the original floor plan and the exterior in 1990. Images of the house are available at <<http://www.simpsonandbrown.co.uk/projects/tinwald.html>> and from the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS) at <<http://canmore.rcahms.gov.uk/en/site/212862/details/tinwald+house/>> both accessed 5 Sept. 2011.

56 Robert Adam, "Alva House, 3rd Floor Plan" (1789), RCAHMS, CLD/27/4 P.

57 Robert Chambers, *Traditions of Edinburgh* (Edinburgh: Chambers, 1824; repr. 1996), 204.

58 John Clark Wilson, "Lands and Houses of Drumsheugh", *Book of the Old Edinburgh Club*, 25 (1945), 71–89 at 85. When offered for sale in 1721 it was described as "a convenient Mansion House, consisting of five Fire-Rooms, with some other Conveniences. Also, a Brew-house, Bake-House, well and several Cellars, two good Gardens, and a Grass Park, [and] about three Acres of Ground". *Edinburgh Evening Courant* (7 Mar. 1721).

and “Books belonging to Mr. Baron Areskine”.<sup>59</sup> Two “Mahogany book shelves” were kept in the dressing room.<sup>60</sup>

If Areskine had a library room or rooms, whether at his country properties at Tinwald and Alva, his Edinburgh town house, or his suburban villa at Drumsheugh, it or they need not have had built in shelves like those at the Arniston and Newhailes libraries. Bookcases, cupboards, and presses could all be used to store books and “bureau-bookcases...became available after 1700”.<sup>61</sup> Book storage did not need to be elaborate. When he died in his study in 1704, John Locke was surrounded by his 3,000 volumes “housed in boxes around the room and in his chamber above”.<sup>62</sup> The surviving labels found on the books in the Alva Collections show that Areskine arranged his books by size and in a particular order which was recorded in his manuscript library catalogue. It is likely, therefore, that Areskine kept his book collection on shelves rather than in boxes.

### Sharing Books

Justin Champion has described the library of the Rotterdam merchant Benjamin Furly, who counted among his friends John Locke, John Toland, and Anthony Collins, as “both a used space where a network of individuals met for conversation and inter-action, and also a material resource: a collection of books and manuscripts”. He goes on to say that in general terms a “good library was the premise for being cosmopolitan” and to advance the idea that “making libraries was a collaborative act”.<sup>63</sup> This was very much the case for Scottish advocates. Their shared educational backgrounds, their need for similar books in their professional lives, and their cultural ideals inspired advocates to create book collections. They stimulated the market for books in early eighteenth-century Edinburgh. As a group they had the economic power to influence what books were printed and imported. The Advocates

59 NLS MS 5114, ff. 28, 32v. The “Old Cabinet and Charter Chest” may have belonged to Areskine. When J. Erskine Murray recorded the papers kept inside a family heirloom in 1910 he described them as “Some of the Papers in Brown veneered Cabinet (Lord Justice Clerk Erskine's)”. The papers found inside post-dated Areskine's lifetime. NLS MS 5114, f. 93.

60 NLS MS 5114, f. 28.

61 Simpson, “Housing Books”, 19.

62 John Harrison and Peter Laslett, *The Library of John Locke* (Oxford: OUP, 1965), 1.

63 Justin Champion, “The Fodder of Our Understanding’: Benjamin Furly’s Library and Intellectual Conversation, c. 1680–1714”, Royal Holloway Eprints <<http://eprints.rhul.ac.uk/165>> accessed 18 Feb. 2009, 1–19 at 1–2, 8–9.

Library, the collection those in their profession shared and which was guided by the recommendations of the bibliophile Sir George Mackenzie as well as skilled librarians like Thomas Ruddiman, provided an example of a learned and cultured collection that advocates could emulate or even compete with as they assembled their own libraries. They would have met not only at the Advocates Library or at each other's library spaces, but also at book sales and auctions and in coffee houses, taverns, and other places the learned and professional gathered.

Collections of books held by family members played important roles in education and in the formation of literary taste. As a travelling student, John Clerk of Penicuik tried to remember which of his father's books he had read before he set off for his continental education. Clerk wanted to shop for books efficiently: there was no point in duplicating books already in the family collection. When he considered which Roman authors to buy, Clerk wrote to his father confirming that he

Shall buy no more till I be certain which you have already. I have a good guess of all the books you have, for I have had all the books which you have in the great study through my fingers a hundred times. And I have seen the catalogue of books you have in the little study.<sup>64</sup>

In addition to the collection they shared as members of the Faculty of Advocates, Scottish advocates could remember the collections they had visited during their educational grand tours and the conversations they had enjoyed at them. Isaac Vossius's library was a tourist attraction recommended by the bookseller Pieter van der Aa after it was acquired by the University of Leiden.<sup>65</sup> The Italian collections of intellectuals such as Giuseppe Valletta and Giambattista Vico in Naples were well known to Scottish travellers of the late seventeenth and early eighteenth centuries. Valleta's library in particular was a "meeting place for the learned and curious, Neapolitans and visitors to the city".<sup>66</sup> Among his visitors were Gilbert

<sup>64</sup> Kees van Strien and Margreet Ahsmann, "Scottish Law Students in Leiden at the End of the Seventeenth Century: The Correspondence of John Clerk, 1694–1697", *LIAS*, 20 (1993), 1–65 at 28.

<sup>65</sup> *Les delices de Leide: une des célèbres villes de l'Europe, qui contiennent une description exacte de son antiquité, de ses divers agrandissemens, de son academie, de ses manufac-tures, de ses curiosités, & généralement de tout ce qu'il y a de plus digne à voir* (A Leide: Chez Pierre Vander Aa, 1712), 149–50.

<sup>66</sup> John Robertson, *The Case for the Enlightenment: Scotland and Naples, 1680–1760* (Cambridge: CUP, 2005), 106.

Burnet and the earl of Shaftesbury.<sup>67</sup> Collections back in the British Isles also attracted Scottish visitors. Clerk visited Sir Hans Sloane's house and saw his impressive collection and library on a visit to London in 1727.<sup>68</sup> There were, however, some limits to sociability. When "Mr Hay brought Mr Maule of Panmuire [sic]" to see the Harleian collection one day in 1724 "it being upon the Stroke of 11 a-clock, & my Dinner just ready", librarian Humfrey Wanley declined to show them around but said they could "call again sometime next week, at a more seasonable hour".<sup>69</sup>

Book collectors who shared access to their libraries could expect to have their collections – and themselves – praised by grateful scholars. Thomas Ruddiman thanked both Sir David Dalrymple and Andrew Fletcher of Saltoun for their help in the preface to his edition of George Buchanan's *Opera omnia* of 1715. Ruddiman had quite different political views to his book suppliers but nonetheless obtained access to their bookshelves.<sup>70</sup> Alexander Cunningham fully expected to have access to books in the Harleian library for scholarly purposes despite his position as the earl of Sunderland's buying agent and therefore an employee of a rival collector.<sup>71</sup> The courtesies of social scholarship overrode political concerns. These "temporary book transplants" encouraged the spread of knowledge and cemented scholarly friendships.

Acknowledging a patron's learning was a sure way to gain favour. When he wrote the "Epistle Dedicatory" to his *The Laws and Customs of Scotland, in Matters Criminal* in 1678, Sir George Mackenzie of Rosehaugh, the founder of the Advocates Library, praised its dedicatee, the duke of Lauderdale, the developer of libraries at Thirlestane Castle and Ham House, as

the greatest Schollar, who is a states-man in Europe: For to hear you talk of books, one would think you had bestowed no time in studying men;

<sup>67</sup> Ibid. Although Areskine did not list Burnet's account of his travels, his wife's catalogue includes "Dr Burnet's Letters of Travelling" (Rotterdam, 1686). The work included Burnet's description of his meeting with Valletta and his circle in his library in Naples but tactlessly linked them with atheism. Robertson, *Case*, 139–40.

<sup>68</sup> John Clerk, *Memoirs of the Life of Sir John Clerk of Penicuik, Baronet Baron of the Exchequer Extracted by Himself from His Own Journals, 1676–1755*, ed. John M. Gray (Edinburgh: EUP, 1892), 126.

<sup>69</sup> Humfrey Wanley, *The Diary of Humfrey Wanley*, ed. C.E. Wright and Ruth C. Wright, 2 (London: Bibliographical Society, 1966), 292.

<sup>70</sup> John W. Cairns, "Alexander Cunningham, Book Dealer: Scholarship, Patronage, and Politics", *Journal of the Bibliographical Society of Edinburgh*, 5 (2010), 11–35 at 12–13, 26.

<sup>71</sup> Ibid. 11.

and yet to observe your wise conduct in affairs, one might be induced to believe, that you had no time to study Books.<sup>72</sup>

Authors readily recognised that their endeavours were part of a system that relied on shared learning and were happy to give credit where it was due. In 1754, when he was Professor of Scots Law at the University of Edinburgh, Areskine's kinsman John Erskine published his textbook *The Principles of the Law of Scotland*. This was written for his students and was intended as a replacement for Mackenzie's *Institutions*. Erskine's *Principles* succeeded in this and the last edition of Mackenzie appeared in 1758: Erskine's *Principles* was thereafter the favoured textbook for the study of Scots law.<sup>73</sup> In his introductory "Advertisement" to the work, Erskine acknowledged that he had had help with writing his textbook and declared that

I subjected my Essay, after having employed my utmost skill upon it, to several Gentlemen distinguished by their knowledge of the law: to whom I embrace this public opportunity of offering my sincere acknowledgements, for the trouble they have taken in revising it, and for their judicious remarks and just amendments.<sup>74</sup>

Erskine did not name the learned gentlemen who provided their valuable editorial assistance but it is not outside the bounds of possibility that Areskine was one of them. Areskine's collection was certainly used in the composition in another of Erskine's works. His personal collection of judicial decisions in manuscript was cited fourteen times in Erskine's posthumous *Institute of the Law of Scotland* of 1773. All of the "Tinw". references in Erskine's *Institute*, as would be expected given Areskine's dates on the Bench as Lord Tinwald (1744–1763), date from the 1740s and 1750s. They were probably loaned to the author by Areskine's son, Lord Alva.<sup>75</sup>

<sup>72</sup> George Mackenzie, "Epistle Dedicatory" in *The Laws and Customs of Scotland, in Matters Criminal: Wherein is to be Seen how the Civil Law, and the Laws and Customs of Nations do Agree with and Supply Ours* (Edinburgh: Printed by George Swintoun, 1678; facs. edn Clark, NJ: Lawbook Exchange, 2005).

<sup>73</sup> John W. Cairns, "Institutional Writings in Scotland Reconsidered", *Journal of Legal History*, 4/3 (1983), 76–117 at 93.

<sup>74</sup> John Erskine, *The Principles of the Law of Scotland: In the Order of Sir George Mackenzie's Institutions of that Law*, 1 (Edinburgh: Printed by Hamilton, Balfour, and Neill, 1754), p. iv.

<sup>75</sup> John Erskine, *An Institute of the Law of Scotland in Four Books: In the Order of Sir George Mackenzie's Institutions of that Law* (Edinburgh: Printed for John Bell, 1773), 135, 140, 170, 177, 319, 351, 367, 371, 439, 440, 482, 490, 500, 584. Areskine's collection of Session Papers,

## A Sociable Family of Book Collectors

Once he obtained them, Areskine's books were not static: they moved with their owner or were sent to family members as needed. There are several references in the 1731 manuscript list to books either being "Taken to London" or sent to Areskine's son Charles to assist his legal studies there. These include books on English law such as John Selden's *Fleta, seu commentarius juris Anglicani*, "Hobart's Reports", "Vaughan's Reports", and an octavo edition of Sir Edward Coke's *Reports*. Coke's *Institutes* also made the trip to London on "15 Aug<sup>t</sup> 1735" when manuscript list notes that "The 4 Books in these three articles taken out by Mr Areskines orders & sent to London to his son Mr Charles". On 7 February 1736, Coke's *Reports* in seven volumes was sent.<sup>76</sup>

That the younger Charles was interested in books and had begun to collect his own library before his early death is certain since several of his books survive in the Alva Collections in Edinburgh. These include textbooks he may have used as a student at the University of Cambridge in the early 1730s and books on English law which may show an antiquarian's interest in the subject.<sup>77</sup> Considering his father's connection with the transportation of Gravina's manuscripts in 1710, it is interesting that Erskine had a copy of Gravina's works as published in a corrected new edition in Leipzig in 1717 with him at Cambridge.<sup>78</sup> After his death in 1749, Charles Erskine's books seem to have been taken by his brother James. None of the books in the Alva Collections with a provenance connection to the younger Charles appear in the 1731 manuscript but several contain his brother's bookplate. James might have preserved the textbooks for his own children. He would have found the books on English law useful in his own career as a Baron of the Exchequer.

which survives in the Advocates Library, includes papers for these dates. Many of them are annotated in his hand.

<sup>76</sup> NLS, MS 3283, "Catalogus Librorum D. D<sup>ni</sup>. Caroli Areskine de Barjarg, Regiarum Causarum Procuratoris, 1731", ff. 7, 55.

<sup>77</sup> E.g. NLS, Alva.280 (Marc Antoine Muret, *Orationes, Epistolae, Hymnique Sacri* (1592)); NLS, Alva.308 (Francisco Sánchez de las Brozas, *Minerva, seu de causis linguae latinae commentarius* (1714)); AL, Alva Coll., 122 (James Stirling, *Methodus differentialis: sive tractatus de summatione et interpolatione serierum infinitarum* (1730)); NLS, Alva.76 (John Cowell, *Institutiones Juris Anglicani* (1676)); NLS, Alva.78 (Ranulf de Glanville, *Tractatus de legibus & consuetudinibus regni Angliae* (1673)).

<sup>78</sup> AL, Alva Coll., 132 (Gianvincenzo Gravina, *Opera quæ extant omnia, in tres tomos divisa* (1717)). Inscription on first front free leaf: "Chas. Erskine Collegii Corporis Christi Cantabrigiae 1733".

The reasons for other books being “Taken to London” are less clear. Some of these are among the oldest printed books listed in the 1731 manuscript and include Venetian editions of Horace and Valerius Maximus published in 1483 and 1488 respectively, an edition of Virgil published by the Giuntas of Florence in 1520, and an edition of Lucan published in Paris in 1528. There are no indications about when these books travelled or why. Areskine’s copies of these books have not been located so it is also unclear if they ever returned to Edinburgh with their owner.

Book ownership was important in the Areskine household. Areskine’s first wife Grisel Grierson of Barjarg (m. 21 December 1712) had her own collection and her library catalogue in fact pre-dates her husband’s. Now in the NLS as MS 5161, her “Catalogue of Books belonging to Mistris Areskine of Barjarg”, is dated “29th August 1729”. Intriguingly, the 1729 and 1731 Areskine manuscripts were written, at least at in its early years in the case of the 1731 manuscript, in the same hand. Although it is not known who wrote the manuscripts, some speculations can be entertained. It is unlikely that the Areskine household would have had the services of a dedicated librarian to tend to their books.<sup>79</sup> It is likely that a legal clerk wrote the catalogues: the writing is in a clear clerk’s hand and the pages are neatly laid out.

Grisel’s catalogue divided her books by size but it also includes a final section for “Plays and Pamphlets”. As with Areskine’s 1731 manuscript, Grisel’s list includes places of publication and dates and divides the books by size. Although more than half of her books are on religious subjects, Grisel’s collection also included works of popular fiction such as *Gulliver’s Travels*, works of epic poetry such as Butler’s *Hudibras* and Milton’s *Paradise Lost*, recipe books, French grammars, and the popular periodicals *The Spectator* and *The Tatler*.<sup>80</sup> As Katharine Glover has observed, popular periodicals offered their readers a chance to participate in, or at least imagine that they were taking part in national debates.<sup>81</sup> From looking at her library list, we learn that “Mistres Areskine” was an avid reader of sermons, could read French, and was fond of

79 Walter Scott noted that the bibliophile John, duke of Roxburgh, had a livery servant who was responsible for “arranging his books, fetching and replacing the volumes which he wanted, and carrying on all the intercourse which a man of letters holds with his library”. This servant “knew every book, as a shepherd does the individuals of his flock, by what is called head-mark, and could bring his master whatever volume he wanted”. Walter Scott, *The Antiquary* (Edinburgh: B & W, 1993), 418.

80 NLS, MS 5161, f. 20–21.

81 Katharine Glover, “The Female Mind: Scottish Enlightenment Femininity and the World of Letters. A Case Study of the Women of the Fletcher of Saltoun Family in the Mid-Eighteenth Century”, *Journal of Scottish Historical Studies*, 25/1 (2005), 1–20 at 9.

works relating to *The Beggar's Opera*.<sup>82</sup> She seems to have shared Areskine's inclination for a personal approach to religion.

Grisel passed books to their daughter Christian, "Lady Laurie", in much the same way that her husband sent books to their son in London. For example, on 19 February 1733, *A Collection of the Best English Plays* published in 1710 in seven volumes was sent to the recently married Christian when she was spending time in the country.<sup>83</sup> "The Holy Bible in 2 Vol." and one of two copies of "Stanhope's Thomas a Kempis" were "given to my Lady Laurie" at unspecified times.<sup>84</sup> It is clear that the family circulated their books among themselves. Grisel's collection was smaller than her husband's but she valued her seven folios, sixteen quartos, and 103 smaller books, along with her collection thirty-two pamphlets and plays, enough to record them.

The level of education that Grisel and Charles's daughters obtained can only be speculated upon. It is not known when Grisel died; her husband remarried in 1753. Although their brothers had educations that ensured their success in the legal profession, Christian (b. 1715), Jean (b. 1726), and Susannah (b. 1727) probably received educations suitable for girls of the gentry class. This would have included lessons or classes in English and French and music and dancing lessons.<sup>85</sup> It can only be retrospectively hoped that the Areskine girls enjoyed similar advantages and encouragement as the daughters of their father's judicial colleague, Andrew Fletcher, Lord Milton. David Hume and other intellectuals promoted the idea that women could offer a civilising influence in society: to do this they needed good educations.<sup>86</sup> The Fletcher girls had access to libraries collected by their female ancestors, were encouraged to read and to correspond with each other about books and ideas, and to discuss literature. History was an especially appropriate subject for females in the Fletcher household.<sup>87</sup> It is likely given their fathers' close working relationship as clients of the earl of Ilay and membership of Edinburgh's legal elite, that the Areskine and Fletcher daughters knew each other and shared the benefits of expanding social opportunities for women of their class. Hume's idealisation of the civilising power of interacting with women had real underpinnings. Women in

<sup>82</sup> At NLS MS 5161, f. 24 are listed *Beggar's Opera* ("2 Copy's"); *Polly. Or the 2d Part of the Beggar's Opera*, *Polly Peachum's Opera*; and *The Life of Polly Peachum*. All of these were published in London in 1728.

<sup>83</sup> Ibid. f. 24. Plays were read for their plots and collections of them were popular among the gentry from the seventeenth century. Birrell, "Reading as Pastime", 114.

<sup>84</sup> NLS, MS 5161, ff. 18–19.

<sup>85</sup> Glover, "Female Mind", 3.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid. 6–17.

enlightened Edinburgh were increasingly able to participate in social activities such as attending assemblies and the theatre.<sup>88</sup> Grisel's collection of plays, pamphlets, and popular periodical literature gives evidence for the female Areskines' active participation in Edinburgh's social and cultural life.

Although members of the cadet branch of the Erskine family were keen bibliophiles, the attitude of their cousin John Erskine, the earl of Mar and sometime patron to Areskine, to books was more ambivalent. He was well educated and keenly interested in architecture. Books were important to Mar: one of his first acts as a Jacobite exile was to request that a copy of Clarendon's *History* be sent to him.<sup>89</sup> Mar's advice to his son written in 1726 however, was to "Be not bookish or sedentary; use such sports, diversions, and exercises as you shall like best in a moderate way".<sup>90</sup> The senior branch of the Erskine family could rely on income from their lands and they could pursue noble activities. Areskine, however, needed his learning and his books to advance himself and his family. Areskine and his sons used their books to enhance their legal careers. His brother Robert's library, experience of books, and skill in library creation all helped him increase his favour with Peter the Great. The Areskine ladies meanwhile used their collections as demonstrations of intellectual and cultural interests. The cadet branch of the family therefore used their books for practical purposes. All of the Areskines used their books as a means of encouraging professional and social relationships within and outwith the family. As historian of the book James Raven explains, "men and women of property regarded books as vehicles of enlightenment and instruction, but also, in consequence, as instruments of social and cultural assertiveness".<sup>91</sup>

Books were not just professional tools for Areskine: they were also very much a part of his life as a sociable eighteenth-century gentleman. Areskine's second wife, Elizabeth Harestanes was a widow who brought two daughters, Mary and Wilhelmina, to the Areskine family. A friend of Areskine's step-daughters who spent time at Alva House remembered her stays there with fondness. As Ramsay of Ochertyre put it: "[Areskine] was at uncommon pains to regulate the taste and sentiments of his young friends, by recommending

88 Rosalind Carr, *Gender and Enlightenment Culture in Eighteenth-Century Scotland* (Edinburgh: EUP, 2014), 103.

89 Edward Gregg, "The Jacobite Career of John, Earl of Mar", in *Ideology and Conspiracy: Aspects of Jacobitism, 1689–1759*, ed. Eveline Cruikshanks (Edinburgh: John Donald, 1982), 179–200 at 179.

90 John Erskine, "My Legacie to My Dear Son Thomas, Lord Erskine", in *Wariston's Diary and Other Papers, Publications of the Scottish History Society*, 26 (1896), 157–91 at 185.

91 Raven, "Debating Bibliomania", 203.

proper books to them" and would "even help them to make verses or puns".<sup>92</sup> It seems unlikely that Areskine would have been recommending Justinian's *Corpus iuris civilis* to the young ladies of his family and their associates for their holiday amusement so it is safe to assume that he was well informed about recently published books about sciences, histories, novels, poetry, and sermons. Some of the miscellaneous books he acquired later in his life bear this out. The 1740s saw the publication of Nicholas Saunderson's *The Elements of Algebra* and Colin Maclaurin's *An Account of Sir Isaac Newton's Philosophical Discoveries*: Areskine was a subscriber for both of these works. Titles such as these demonstrate that Areskine had not lost his earlier interests in mathematics and natural philosophy and, if these books were the sort of thing he was recommending to his "young friends", it shows that he never lost his taste for teaching. Publications from the 1750s such as "Fielding's History of Tom Jones. 4 Vol.", Johnson's *A Dictionary of English Language*, an edition of *The Spectator* on "Large Paper" printed in Edinburgh in 1753, and in the 1760s Laurence Sterne's *The Life and Opinions of Tristram Shandy* all show an engagement with contemporary literature. The last of these attracted critical attention among Areskine's contemporaries. Horace Walpole peevishly wrote to his Scottish friend and fellow book collector, David Dalrymple, the future Lord Hailes, complaining that

At present noting is talked of, nothing admired, but what I cannot help calling a very insipid and tedious performance: it is a kind of novel called, *The Life and Opinions of Tristram Shandy*: the great humour of which consists in the whole narration always going backwards.... It makes one smile two or three times at the beginning, but in recompense makes one yawn for two hours.<sup>93</sup>

Areskine listed his copy of Sterne's book in his catalogue without providing any clues about what he thought of it. Clearly this was a book, whatever its merits or faults that was discussed in polite society and which, therefore, had to be read.

Reading "was inherently a social activity" throughout the eighteenth century. Reading aloud whether plays, sermons, or other texts "was not merely a

<sup>92</sup> John Ramsay, of Ochtertyre, *Scotland and Scotsmen of the Eighteenth Century*, ed. Alexander Allardyce (Edinburgh: William Blackwood and Sons, 1888), 109.

<sup>93</sup> Horace Walpole, in Horace Walpole and David Dalrymple, *Horace Walpole's Correspondence with Sir David Dalrymple*, vol. 15 of *The Yale Edition of Horace Walpole's Correspondence*, ed. W.S. Lewis (London: OUP; New Haven: Yale University, 1952), 66.

desirable social accomplishment but an absolutely vital skill".<sup>94</sup> Doubtless Areskine, who was known for his considerable "oratorical powers" in the courts and whose "soft and harmonious" words at the Bar earned him the nickname "Sweet-lips",<sup>95</sup> would have been much in demand in the drawing rooms, parlours, and libraries of his friends and family. Surely advocates, who wrote and spoke for a living, were the stars of the social settings of eighteenth-century Scotland. Areskine was a welcome addition to the neighbourhood of Alva which Ramsay characterised as "consisting of amiable and well-informed people, who lived together on an easy friendly footing".<sup>96</sup> Book loans, reading aloud, and discussions about books, poetry, and music may all very well have been important parts of Areskine's social life at his country home.

Wherever he kept them and however he used them, Areskine's books survived their owner and his descendants. Unlike the collections at Arniston and Newhailes which stayed on their shelves for many years after their creators' deaths, Areskine's books found new homes by the mid-nineteenth century. A study of the surviving books from Areskine's collection allows for an exploration of the fates of books in eighteenth-century Scotland and beyond.

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94 David Allan, *Making British Culture: English Readers and the Scottish Enlightenment, 1740–1830* (London: Routledge, 2008), 99–100.

95 Ramsay, *Scotland and Scotsmen*, 102–03.

96 *Ibid.* 109.

## The Fates of Books: The Alva Collections

### Provenance

Provenance is the “pedigree of a book’s previous ownership”.<sup>1</sup> This history can be determined in a variety of ways: owners may have left marks on their books including writing their signatures on the title page or elsewhere in the book, installing a printed bookplate, adding their names or arms to book’s binding, using a code, writing in a motto, or adding a book label. They may also have left marginal notes.<sup>2</sup> There are multiple forms of provenance to draw upon when attempting to reconstruct the contents of Charles Areskine’s library. First, there is the manuscript of 1731 which lists his books. Areskine’s books can be further traced in his son’s manuscript library catalogue of 1774 and they also appear in sale catalogues dating from the 1850s when some of the collection was dispersed. Books that Areskine owned survive in modern collections notably in the National Library of Scotland and the Advocates Library, both in Edinburgh. Provenance evidence in the Alva Collection books can help discover the fates of some of Areskine’s books that remain in Scotland.

Library cataloguers of the past, assuming that the contents of the book were the main consideration, tended not to record provenance for specific copies of books in their care.<sup>3</sup> However, new digital cataloguing techniques have emerged and these have increased the possibilities for recording and researching provenance. Retrospective cataloguing projects can recognise the importance of previously unrecorded details and add them to extant records both locally and national imprint catalogues such as the English Short Title Catalogue (ESTC).<sup>4</sup> The provenance details so prized today were also not always valued by book owners of the past nor do they routinely occur in the books that survive from their libraries. Librarian David Pearson noted that “it is

<sup>1</sup> John Carter and Nicholas Barker, *ABC for Book Collectors*, 8th edn (New Castle, DE; London: Oak Knoll; British Library, 2004), 177.

<sup>2</sup> David Pearson, *Books as History: The Importance of Books beyond Their Texts* (London; New Castle, DE: British Library; Oak Knoll, 2008), 95, 98.

<sup>3</sup> Ibid. 94.

<sup>4</sup> Brian Hillyard, “Working towards a History of Scottish Book Collecting”, in *Six Centuries of the Provincial Book Trade in Britain*, ed. Peter Isaac (Winchester: St Paul’s Bibliographies, 1990), 181–6 at 185.

not uncommon to find a seventeenth-century book with no inscriptions, bookplates or other signs to show what hands it has passed through over the years".<sup>5</sup> Some early modern book owners preferred their copies to be free of the signs of previous ownership so they removed bookplates and washed out inscriptions. Books may have also lost their provenance evidence over time as they were rebound, re-backed, or repaired.<sup>6</sup> However, many of Areskine's surviving books in the Alva Collections contain provenance evidence as bookplates, signatures, and inscriptions. The two Alva Collections, therefore, provide a good case study for the survival of provenance in a small historic library.

### The Alva Collections

The Alva Collections in Edinburgh take their names from the Areskine family estate at Alva near Stirling in Clackmannanshire which Charles Areskine's grandfather, Sir Charles Areskine, bought in 1649. Our Charles Areskine purchased the estate from his nephew after his older brother's mismanagement and debts meant that it was in danger of being lost to the family. Areskine developed the estate and the large house at Alva where he grew up became his holiday home. Areskine was buried in the family vault of the parish kirk at Alva where he was commemorated by a marble monument with a Latin inscription which his son James wrote.<sup>7</sup> Alva House and the estate remained in the family until 1775 when Areskine's son sold it.<sup>8</sup> Both Charles Areskine and his son James were described as "of Alva". James used "Lord Barjarg" as his judicial title from 1761 to 1772 but used "Lord Alva" from 1772 until his death in 1796.<sup>9</sup> Erskine had sold the estate inherited from his mother, Barjarg Tower, in 1772 and this

5 Pearson, *Books as History*, 94.

6 Ibid. 94, 173.

7 Robert Paul, "Alva House Two Hundred Years Ago", *Stillfoots Record* [Alva], 27 Mar.-10 Apr. 1901, pt II. The monument survived a fire which destroyed the church in 1985. It is now in the Johnstone Mausoleum in the Alva Old Kirk yard. The tablet also commemorates Areskine's wife, "Griselda Grierson de Barjarg" who was buried at Greyfriars in Edinburgh, their ten children who died young and were buried near their mother, and James's brother Charles who was buried in the chapel of Lincoln's Inn in London. "Inscription", Johnstone Mausoleum, Alva (transcribed 4 Sept. 2010).

8 "Johnstone Mausoleum", *ClacksWeb*, <[http://www.clacksweb.org.uk/visiting/johnstone\\_mausoleum/](http://www.clacksweb.org.uk/visiting/johnstone_mausoleum/)> accessed 18 June 2010.

9 "Lord Barjarg Changes his Title" (10 Mar. 1772), in *The Acts of Sederunt of the Lords of Council and Session, from the 15th of January 1553, to the 11th of July 1790: Published with the Authority of the Court* (Edinburgh: printed by Neill and Company, for Elphingston Balfour, [1790]), 571.

may have inspired him to change his title; however, he remained “Lord Alva” after the sale of the Alva lands.

The Trustees of the Dollar Academy presented the books that now form the Alva Collections to the National Library of Scotland and the Advocates Library in 1927.<sup>10</sup> In his report to the Trustees of the National Library of Scotland for that year, NLS Librarian W.K. Dickson described the donation as “...a collection of early law books, chiefly the works of Continental Civilians and writers upon the law of nations, which were at one time in the library of Charles Erskine of Tinwald, who was Lord Justice Clerk from 1748 to 1763”.<sup>11</sup> The NLS had come into being in 1925 and its foundation inspired a spate of donations, bequests, and purchases which included the Moreton Papers, the Lauriston Castle library, the Rosebery early printed books, and some books from Sir Walter Scott’s library at Abbotsford.<sup>12</sup> The NLS Board of Trustees had the right to accept property “for the purposes of the Library”.<sup>13</sup> Books collected by Areskine and members of his family were one of the early donations to the new national institution.

The modern Alva Collections were examined in conjunction with NLS MS 3283 in 2008 to 2009 as part of an Arts and Humanities Research Council funded collaborative doctoral project entitled, “The Library of Charles Erskine (1680–1763): Scottish Lawyers and Book Collecting, 1700–1760”. A physical survey of Areskine’s books now held in the Alva Collections enhanced the study of the 1731 manuscript. These valuable provenance details from Areskine and other owners helped to establish the history of some of Areskine’s books.

### *The Alva Collection in the National Library of Scotland*

The NLS holds more than 400 titles in its Alva Collection. Many of them contain the bookplates of Charles Areskine and his son James Erskine. Their

<sup>10</sup> *Special and Named Printed Collections in the National Library of Scotland*, ed. Graham Hogg (Edinburgh: National Library of Scotland, 1999), 4; “Special and Named Printed Collections at the National Library of Scotland”, <<http://www.nls.uk/catalogues/online/snpc/list.cfm?letter=A>> accessed 11 July 2011.

<sup>11</sup> W.K. Dickson, “Report by the Librarian to the Standing Committee of the Trustees for the Year 1927”, in *Report by the Standing Committee to the Board of Trustees and Report by the Librarian for the year 1927* (Edinburgh: HMSO, 1928), 9. The gift was also acknowledged in the *Scotsman* newspaper the day after the meeting where the reports were published almost word for word. See “Meeting of Trustees”, *Scotsman* (10 Jan. 1928), 9.

<sup>12</sup> Denis Smith, “An Actual Temple of Learning’: The National Library after 1925”, in *For the Encouragement of Learning: Scotland’s National Library, 1689–1989*, ed. Patrick Cadell and Ann Matheson (Edinburgh: HMSO, 1989), 266–91 at 26.

<sup>13</sup> National Library of Scotland Act 1925, Ch. 2, b.

bookplates are described in the Franks survey of British and American bookplates.<sup>14</sup> Areskine used at least two different styles of bookplate after his appointment as Lord Justice Clerk in 1748. All of the bookplates in the Alva Collections mention his position: it therefore seems that Areskine did not use a bookplate before 1748. Both versions feature the family crest and the family motto “Je pense plus”. The larger format bookplate, Franks 679, uses the abbreviation “Ld.” for “Lord” while the smaller bookplate,<sup>15</sup> Franks 680, spells out “Lord” in full. Erskine’s bookplates are described at Franks 9934 and 9935. As with his father’s bookplates, Erskine’s bookplates are of two sizes. For both collectors the larger format plates are described in the Franks survey as “Jacobean Armorial” plates while the smaller formats are in a “Chippendale Armorial” style.<sup>16</sup>

Books signed by Areskine with his full name always have the “Areskine” spelling of his name which also appears on his bookplates. Most of the Areskine bookplates in the Alva Collection books appear on their front pastedowns. Some, however, appear in other places such as at the back of the books or on loose leaves. These anomalies may indicate that some of the bookplates were installed at speed, possibly to commemorate Areskine’s appointment as Lord Justice Clerk. Many of Areskine’s books were plainly bound: their bindings would not offer clues about how the books should be placed on their shelves. Anyone pasting in bookplates would have needed to pay some attention to the task to get it right.

The survey confirmed that the manuscript acted as a shelf list for Areskine’s collection. Some of the Alva books in the NLS retain small paper labels pasted on their spines which have numbers matching those of the 1731 manuscript. Others have their numbers written directly onto their bindings. Eighty of the books in the NLS Alva Collection retain clearly visible spine labels which match the entries on the manuscript. Many more books have evidence that a spine label once existed but has been removed or has fallen off and several have labels which are too faded or damaged to read. The existence of the surviving spine labels and numbers means it is possible to imagine the appearance of the collection in Areskine’s time.

<sup>14</sup> E.R.J. Gambier Howe, *Franks Bequest: Catalogue of British and American Book Plates Bequeathed to the Trustees of the British Museum by Sir Augustus Wollaston Franks*, 1 (London: Trustees of the British Museum, 1903), 23, 346.

<sup>15</sup> The larger format bookplate is 15.75cm tall x 9.75cm wide (6.25 x 3.75 in). See e.g. NLS, Alva.101. The smaller format bookplate is 9.5cm tall x 9cm wide (3.75 x 2.5 in). See e.g. NLS, Alva.19.

<sup>16</sup> Howe, *Franks Bequest*, 23, 346.

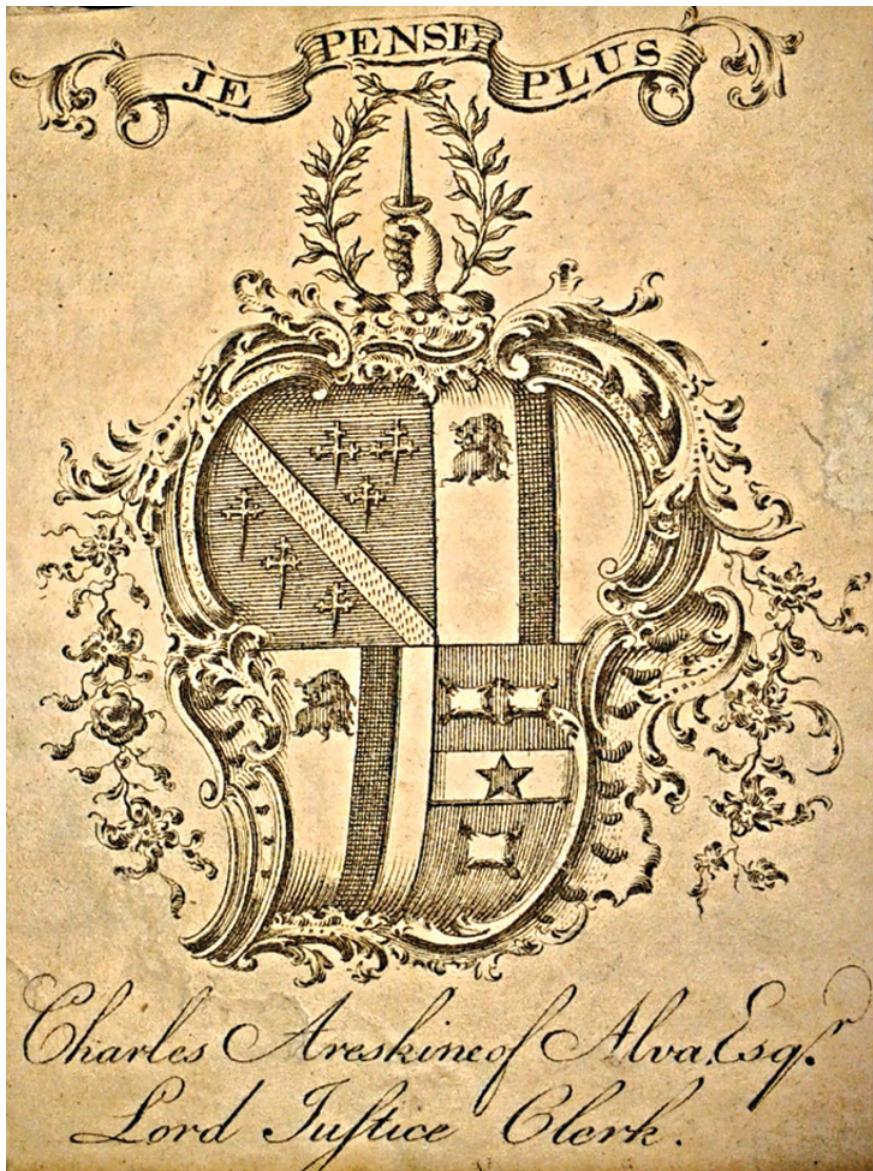


FIGURE 1   *Bookplate of Charles Areskine of Alva, Lord Justice Clerk.*  
PRIVATE COLLECTION (BASTON)

A useful visual reference for imagining how Charles Areskine's library looked in the 1730s comes from a contemporary painting by Gawen Hamilton. A group portrait, *Nicol Graham of Gartmore and Two Friends Seated in a Library*, now displayed in the National Gallery of Scotland, dates from c. 1730. The painting shows three gentlemen engaged in a discussion. One of them is Nicol

(or Nicholas) Graham of Gartmore who was called advocate on 17 January 1724.<sup>17</sup> The library shown behind the figures has its books shelved according to their sizes and with spine labels. It is not overly fanciful to assume that the book the men are consulting is the library's catalogue. Although part of it is obscured by a curtain, the shelving shows books of a fairly uniform appearance which are not elaborately decorated. They are similar in appearance to many of the books in the NLS Alva Collection in that they are plainly bound. The books in the painting are labelled with small red labels at the tops of their spines.<sup>18</sup> This is a depiction of a lawyer's private collection. Although it is on show and its appearance is pleasing, Graham's book collection is practical rather than decorative.

Internal provenance evidence from books in the Alva Collection confirms that Areskine's "Liberary of Books" went to his son James as instructed in his will of 1763.<sup>19</sup> Of the NLS Alva Collection Books, 248 have internal shelf marks in the form "letter.number.number" (e.g. "a.1.42"). (See Fig. 1 for an example which has been written at the top of Areskine's bookplate.) These references relate to the manuscript "Press Catalogue of the Library belonging to Lord Alva" (c. 1774) now held at the Edinburgh University Centre for Research Studies as MS La.III.755.<sup>20</sup> In contrast with his father's simple numbered spine label system, James shelved his books using a lettered press and numbered shelf system which is described at the beginning of his catalogue. Users could find books by following the instructions that "The Shelfs are numbered from № 1...beginning above the Surbase" with "Press A Shelf 1st in Folio" being a "Manuscript concerning the Law of England".<sup>21</sup> Areskine's 1731 library catalogue is itself listed in his son's and the manuscript has its "Lord Alva" shelfmark (n.1.1) written in ink on its front pastedown.

Of the Alva books in the NLS, 206 (49 per cent) have the bookplate of "Charles Areskine of Alva Esqr. Lord [or Ld.] Justice Clerk" while 93 (22 per cent) contain the bookplate of his son "James Erskine of Alva Esqr.". Most of James Erskine's bookplates in the Alva Collections are of the same format as his father's smaller bookplate. James always used the spelling "Erskine" as did

<sup>17</sup> *The Faculty of Advocates in Scotland with Genealogical Notes*, ed. Francis J. Grant (Edinburgh: Scottish Record Society, 1944), 87.

<sup>18</sup> I have not found a catalogue for this collection.

<sup>19</sup> Charles Areskine, "Will", National Archives, Prob. 11/888, ff. 139–41 (f. 139<sup>v</sup>).

<sup>20</sup> The manuscript is undated. The only surviving provenance information is the title and a faint pencil inscription on the front pastedown which reads "J. Erskine Sept<sup>r</sup> 28 1803". The "J. Erskine" of 1803 is Charles Areskine's great-grandson, James Erskine of Aberdona.

<sup>21</sup> EUL, Centre for Research Collections, MS La.III.755, f. 1.

his brother Charles. It is unclear why Areskine's sons preferred this spelling to the one their grandfather, father, and uncles used but their choice has been helpful for establishing the ownership of books in the Alva Collections. Nine books contain the signature of "Charles Erskine" (or the initials "C.E."). These books once belonged to Charles Areskine's older son, also Charles (1716–1749). Three of the inscriptions note that he was a student at Corpus Christi, Cambridge in 1733 and 1734.<sup>22</sup> These books do not appear in the Charles Areskine manuscript list and may have come directly to James Erskine after his brother's early death. James's bookplate is in most of them.<sup>23</sup>

### *The Alva Collection in the Advocates Library<sup>24</sup>*

As with the NLS Alva Collection, the Trustees of the Dollar Academy donated the Alva books held by the Advocates Library in 1927.<sup>25</sup> There are more than 250 books in this collection which is now shelved in the Treasurer's Room and elsewhere throughout the Library. Of the books examined in the Advocates Library's Alva Collection, 164 (64 per cent) have the bookplate of "Charles Areskine of Alva Esqr. Lord [or Ld.] Justice Clerk" while 77 (30 per cent) contain the bookplate of his son "James Erskine of Alva Esqr.". Only three books have provenance details relating to James's brother but as with the examples in the NLS collection these are not listed in the 1731 manuscript and so indicate that the younger Charles' books went directly to his brother at his death in 1749. Most of the books identifiable in the 1731 manuscript and now in the Advocates Library are legal folios in Latin. James's books, however, most of which are not in the 1731 manuscript, deal mostly with English law. This is consistent with his career as a Baron of the Exchequer.<sup>26</sup>

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<sup>22</sup> John Venn and J.A. Venn, *Alumni Cantabrigiensis: A Biographical List of All the Known Students, Graduates and Holders of Office at the University of Cambridge, from the Earliest Times to 1900*, 1: *From the Earliest Times to 1751*, 2: *Dabbs-Juxton* (Cambridge: CUP, 1922), 105.

<sup>23</sup> E.g. Alva.76, Alva.78, Alva.122, Alva.133, Alva.280, Alva.286, Alva.308, Alva.311, and Alva.244.

<sup>24</sup> I am grateful to the Advocates' Library's Senior Librarian Andrea Longson who allowed me to have special access to the collections in her care in 2009. I am also grateful to Mungo Bovey, QC, the Keeper of the Library, for allowing me access to the Alva Collection and to Alan Dewar, QC, then Treasurer of the Faculty of Advocates, for allowing access to his office which is where the Alva Collection is kept. Special thanks must also go to Angela Schofield and Rosemary Paterson who delivered the Alva materials.

<sup>25</sup> "Special Collections: Alva", Advocates Library <<http://www.advocates.org.uk/library/specialcollections/alva.html>> accessed 1 Sept. 2011.

<sup>26</sup> I am grateful to John Cairns for this observation. For a discussion of the Court including its use of English traditions, see A.L. Murray, "The Post-Union Court of Exchequer", in *Miscellany Five by Various Authors*, ed. Hector L. MacQueen (Edinburgh: Stair Society, 2006), 103–32.

The Alva Collection books in the Advocates Library mostly deal with legal topics. This concentration on legal books reflects both the ideals of the Advocates Library's founding father Sir George Mackenzie of Rosehaugh and the restatement of the library's aims following the establishment of the National Library of Scotland in 1925. Mackenzie envisioned a collection consisting of five types of legal texts including books on Roman law, Greek law, feudal law, canon law, and practicks. These subjects were to be supported by the three *Jurisprudentiae inservientia*, namely history, criticism, and rhetoric, which would help advocates with their interpretation of the law.<sup>27</sup> Mackenzie's advice, however, was a set of recommendations not rules: the Advocates Library never excluded non-legal books from its collection. Between 1692 and 1742 the library added about 10,000 items and the Copyright Act of 1710, which gave it the right to collect a copy of every book registered at Stationers' Hall in London, ensured that a supply of miscellaneous titles regularly entered the collection.<sup>28</sup>

Throughout the eighteenth century, non-members increasingly applied to use the books housed in the Advocates Library. A special desk was supplied for their use in 1772.<sup>29</sup> Members and non-members alike borrowed or referred to more general works than legal works.<sup>30</sup> By 1799, members took it for granted that they could borrow as many books as they wanted and that they could keep them for as long as they liked.<sup>31</sup> This continued to be a problem into the nineteenth century. In 1826, a disappointed Walter Scott "went to the Library but not a book could I get to look at. It is I think a wrong system the lending books to private houses at all and leads to immense annual losses".<sup>32</sup> Non-members, especially historians, continued to use the collection throughout the nineteenth century.<sup>33</sup> By 1879, the library's catalogue had 250,000 entries and by the

27 George Mackenzie, *Oratio inauguralis habita Edenburgi Id. Mar. 1689. A Dom. Georgio Mackenzeo, De structura bibliothecae purè juricicae, et hinc de vario in jure scribendi genere* (London, 1689), 8, 24.

28 Brian Hillyard, "The Formation of the Library, 1682–1729", in *For the Encouragement of Learning: Scotland's National Library, 1689–1989*, ed. Patrick Cadell and Ann Matheson (Edinburgh: HMSO, 1989), 23–66 at 47–8.

29 Peter Wellburn, "The Living Library", in *For the Encouragement of Learning: Scotland's National Library, 1689–1989*, ed. Patrick Cadell and Ann Matheson (Edinburgh: HMSO, 1989), 186–214 at 201.

30 Ibid.

31 Ibid. 205.

32 Walter Scott, *The Journal of Walter Scott*, ed. W.E.K. Anderson (Edinburgh: Canongate Classics, 1998), 584.

33 Wellburn, "Living Library", 210–11.

early twentieth century the library found itself out of storage space and lacking in funds to care for its collections. In 1919, the Faculty decided to investigate the possibility of working with the government to set up a national library which would have responsibility for the nation's non-legal book collection.<sup>34</sup>

As early as 1808, the Faculty had realised that its library fulfilled the functions of a national library for Scotland. By the early twentieth century there was a growing realisation that a new institution was needed to cope with the demands of budget and space.<sup>35</sup> The National Library of Scotland Act 1925 provided that any new law books which were received by the Copyright Act (by then renewed in the Copyright Act 1911) were to be given to the Faculty of Advocates for their library.<sup>36</sup> This continued the long tradition of legal book collecting by the Faculty.

In July 1941 the Dollar Academy gifted a copy of Craig's *Jus feudale* and "manuscript copy of the catalogue of the books of Charles Erskine of Barjarg (afterwards Lord Justice Clerk Tinwald) dated 1731" to the Advocates Library. The Curators determined in January 1942 that these "formed part of a collection belonging to the late Charles Erskine of Barjarg which had been presented to the National Library by the Trustees of Dollar Academy in 1927" and they "agreed that the two volumes...should meantime be handed over to the National Library with a view to keeping the whole collection together".<sup>37</sup>

Of the Alva Collection books in the Advocate's Library, 188 as well as two of the Session Papers volumes have the internal shelf marks in the form "letter. number.number" (e.g. a.1.42). This makes a total of 438 books in both Alva Collections which have "Lord Alva" shelfmarks which relate to James Erskine's catalogue of 1774. Twenty-six of the books in the Advocates Library Alva Collection retain spine labels or ink inscriptions on their spines which match their listings in the 1731 manuscript and a further sixteen have indications that a label once existed such as a partial label or a surviving imprint. As described above, these indications provide some clues as to the appearance of the collection when possessed by Charles Areskine. The Advocates Library Alva Collection also includes Areskine's collected and bound sets of Session Papers and Justiciary Papers. The sets range in date from 1711 to 1757. They therefore span Areskine's legal career from his start as an advocate to his time as a judge

<sup>34</sup> Ibid. 212–13.

<sup>35</sup> Iain F. Maciver, "The Making of a National Library", in *For the Encouragement of Learning: Scotland's National Library, 1689–1989*, ed. Patrick Cadell and Ann Matheson (Edinburgh: HMSO, 1989), 215–65 at 215.

<sup>36</sup> Ibid. 257; National Library of Scotland Act 1925, Ch. 5.

<sup>37</sup> NLS, F.R. 126d, "Faculty Curators' Minutes" (15 July 1941), (14 Jan. 1942).

and then Lord Justice Clerk. As Angus Stewart has noted, the papers with earlier dates are for cases in which Areskine was involved as an advocate and many of them are inscribed with his signature.<sup>38</sup> Areskine's descendants also used the Alva Session Papers in practice. A reference to them in Lord Alva's 1774 library catalogue records: "Session Papers for 1755 & 1756 2 vol....These Session Papers with the Odd Nos. In...14 Vols. Carried into Georges [sic] Street by Mr Erskine March-28-1787".<sup>39</sup> Twenty-nine folio volumes of these papers survive in the Advocates Library Alva Collection. Many of the cases preserved in the collection are those in which Areskine was involved as an advocate or as a judge and some contain his manuscript notes about the cases. These papers, and especially Areskine's notes about them, are an invaluable resource for the social history of the first half of the eighteenth century in Scotland.

### Provenance: Previous Owners of Books in the Alva Collections

In many cases, and especially when an Areskine bookplate is present, previous ownership details have been defaced in the Alva Collection books now housed in the Advocates Library. The presence of his bookplate suggests this may have done by Areskine himself or by someone who was looking after his books. There are also examples of this practice in the NLS Alva Collection.

Despite what seems to have been a deliberate policy for removing them, the provenance details for some previous owners are intact in books from in Alva Collections. In some cases where names have been removed, places and dates at least remain so that the movement of books can be traced even if ownership cannot. Some of these provide a few clues to the identities of the books' previous owners. Others give more comprehensive details but are incomplete. There may be, for example, a surname to investigate but with initials rather than full names. In a few cases, however, there is adequate information for identifying the previous owners of Areskine's books and even for finding out more of their history. This is the case for Areskine's copy of Benedict Carpzov's *Practicae novae imperialis Saxonicae rerum criminalium* which was published in Frankfurt in 1652: it has his bookplate and a note that "Ch: Areskine Empt. [bought this at] Edinburgi 24 Decr 1743 7 sh. 6 d.". A previous owner, the advocate Charles Cockburn, left an inscription noting that he had bought the book in Leiden in 1705 for four guilders and 13 florins. Cockburn died in 1742 so

38 Angus Stewart, "Session Papers", 209.

39 EUL, MS La.III.755, f. 46. "Mr Erskine" was James Erskine's son, John Erskine of Cambus (1758–1792) who followed his father into the legal profession. *Faculty of Advocates*, 67.

Areskine probably acquired his Carpzov at a posthumous sale of his books. A third inscription has been defaced.<sup>40</sup> Areskine owned two books formerly in the library of William Forbes which Areskine may have purchased at the sale of his books in 1736.<sup>41</sup> Areskine's copy of Georg Obrecht's *Disputatio de regalibus ex commentariis* (now AL, Alva Coll., 129) is inscribed "Bibliothecæ Colbertinæ" and therefore once belonged to Louis XIV's finance minister, Jean Baptiste Colbert (1619–1683). Colbert's library was sold along with books from other members of his family in Paris in 1728.<sup>42</sup> Three more previous owners of Areskine's books in the Alva Collections who can be confidently identified are Isaac Vossius (1618–1689), Robert Norvell (1658–1706), and William Godolphin (bap. 1635–1696).

NLS, Alva.372, which contains Areskine's bookplate, contains a printed note pasted in on its title page which reads "Ex Bibliotheca Viri Illust. Isaaci Vossii". The history of Isaac Vossius's library is somewhat complicated because he sold some of his books during his lifetime and because his heirs sold the rest of his collection to the University of Leiden.<sup>43</sup> However, when they arrived in Leiden

<sup>40</sup> AL, B.1.1.

<sup>41</sup> These are Nicolo Passeri, *Conciliatio cunctarum legum, quæ in toto corpore Juris Civilis* (Frankfurt, 1685) now AL, Alva Coll. 141 and Andreas von Gail, *Practicarum obseruationum tam ad processum iudiciarium* (Antwerp, 1653) now AL, B.1.6 (Macmillan). Alexander Kincaid, *A Catalogue of Curious and Valuable Books, Being the Library of the Deceast Mr. William Forbes Younger of Schivas Advocate. Which will be begin to be Sold at Auction, on Tuesday the 21st of December 1736* (Edinburgh: Alexander Kincaid, 1736), 5. Both books contain inscriptions that indicate that Forbes had obtained them in Edinburgh on 2 Feb. 1731.

<sup>42</sup> The catalogue for the Colbert sale was published in three volumes. See *Bibliotheca Colbertina: seu Catalogus librorum bibliothecæ, quæ fuit primum ill. v. D.J.B. Colbert...deinde ill. D.J.B. Colbert, march. de Seignelay; postea rev. et ill. D.J. Nic. Colbert, Rothomagensis Archiepiscopi; ac demum ill. D. Caroli-Leonorii Colbert, comitis de Seignelay* (Paris: Apud Gabrielem Martin [et] Franciscum Montalant, 1728). Lot 6260 lists, "C. Jorger de Regalibus Thesis. Argent. 1604. Georg. Obrechutus de concipiendis & formandis Libellis. Arg. 1604. Idem de litis contestatione. Arg. 1604. Idem de juramento calumnae. Arg. 1604." Vol. 2, 449.

<sup>43</sup> Astrid C. Balsem, "Books from the Library of Andreas Dudith (1533–89) in the Library of Isaac Vossius (1618–89)", in *Books on the Move: Tracking Copies through Collections and the Book Trade*, ed. Robin Myers, Michael Harris, and Giles Mandelbrote (New Castle, DE; London: Oak Knoll, 2007), 69–86. The title page of Agostino Steuco, *De perenni philosophia ll. x* (Basil, 1542) is reproduced on p. 71 which shows the printed Vossius label. This matches the example in Alva.372. For books sold by Vossius during his lifetime, including books annotated by Hugo Grotius and books from the library of Queen Christina of Sweden, see F.F. Blok, *Contributions to the History of Isaac Vossius's Library* (Amsterdam; London: North-Holland, 1974). For Vossius's life and scholarship see Thomas Seccombe, "Vossius, Isaac (1618–1689)", rev. F.F. Blok, *ODNB* (Oxford: OUP, 2004; online edn 2006) <<http://www.oxforddnb.com/view/article/28356>> accessed 10 Dec. 2009.

in 1690, Vossius's books were given pasted-in provenance notes. This identifies them as parts of the shipment not from the previous sales. At the same time, duplicates in the collection were set aside. The library did not have enough space to house the Vossius "doublettes" so it sold the duplicate copies in 1706 and 1707.<sup>44</sup> Alva.372 is a copy of Barnabé Brisson, *De formulis et sollemnibus populi Romani verbis, libri VIII* (Frankfurt: Apud Ioannem Wechelium & Petrum Fischerum, 1592). The University of Leiden also holds a copy.<sup>45</sup> Areskine's copy, therefore, must have been one of the duplicates sold by the University of Leiden in the early eighteenth century. Vossius's collection was well-known to scholars and it became an attraction for grand tourists. The Leiden bookseller Pieter van der Aa recommended the university library as one of the sights of the town and particularly mentioned that "les Curateurs de l'Academie ont acquis des Heritiers du célèbre Isaac Vossius sa nombreuse Bibliotheque" in his travel guide *Les delices de Leide* of 1712.<sup>46</sup>

Although Vossius is connected with only one book, another collector left several traces in the Alva Collections. Robert Norvell (or Norvall) was a graduate of the University of Edinburgh and an advocate who was admitted to the Faculty in 1683.<sup>47</sup> Four surviving books from Areskine's list contain Norvell's signature in various forms along with variant spellings of the motto, *Quod tibi fieri non vis alteri ne feceris*.<sup>48</sup> A sale or auction catalogue for his library has not been located, but it seems Norvell was interested in books and collecting. Although the records are incomplete, he is known to have donated at least four books to the Advocates Library. These remain in the library and they contain Norvell's signature and motto.<sup>49</sup>

<sup>44</sup> Christiane Berkvens-Stevelinck, *Magna commoditas: A History of Leiden University Library, 1575–2005*, rev. edn, tr. Jan Franz van Dijkhuizer (Leiden: Primavera, 2004), 41; Balsem, "Books from the Library of Andreas Dudith", 82.

<sup>45</sup> The Leiden shelf mark is Special Coll. reading Room GM, call no. 269 B 10. The library catalogue record is available at <http://catalogus.leidenuniv.nl/>.

<sup>46</sup> *Les delices de Leide: une des célèbres villes de l'Europe, qui contiennent une description exacte de son antiquité, de ses divers agrandissemens, de son academie, de ses manufactures, de ses curiosités, & généralement de tout ce qu'il y a de plus digne à voir* (A Leide: Chez Pierre Vander Aa, 1712), 149–50.

<sup>47</sup> *A Catalogue of the Graduates in the Faculties of Arts, Divinities, and Law, of the University of Edinburgh since its Foundation* (Edinburgh: Neill and Company, 1858), 106–7; *Faculty of Advocates*, 166. See also *The Minute Book of the Faculty of Advocates*, 1: 1661–1712, ed. John Macpherson Pinkerton (Edinburgh: Stair Society, 1976), 61.

<sup>48</sup> "What you would not wish done to yourself, do not to another". I am grateful to Brian Hillyard for drawing my attention to this motto and its translation.

<sup>49</sup> NLS MS F. R. 139, "Register of donations, 1705–26, 1760–73". See e.g. *Cl. v. Henrici Zoesii.... Commentarius in Codicem Justinianum* (1660), AL, A.76.5; *Ioachimi Mysingeri a Frundeck*

William Godolphin is another collector whose books appear in the Alva Collections. Godolphin was a lawyer who, after becoming Charles II's Ambassador to Spain, spent the rest of his life there. Areskine's library included two books formerly owned by Godolphin. Unsurprisingly both of them have Spanish connections. At Folio 178 (now AL, Alva Coll., 69a-69b) the manuscript lists...*Labyrinthus creditorum concurrentium*, a work on the law of bankruptcy, by the Spanish jurist Francisco Salgado de Somoza (Leiden, 1654). Folio 185 (now AL, A.86.4) is *Instructorium negotiantium duobus contentum libris* a work on the law of business contracts, by the Spanish Dominican theologian Luis López (Salamanca, 1667). Folio 178 includes an Areskine bookplate in each of its two volumes while Folio 185 has only Godolphin's provenance.

Godolphin's heirs contested his will after his death in 1696 because he had converted to Roman Catholicism and had nominated members of the Roman Catholic clergy as his executors. The heirs eventually succeeded in having the will overturned. Godolphin's assets and property, not including his books, were spread throughout Europe and sorting out his affairs involved the legal systems of several jurisdictions including England, Spain, Venice, and the Low Countries. Godolphin's heirs were in Holland in 1708, the same time that Charles Areskine was there as a travelling legal scholar, to claim money they had banked in Amsterdam. The banker who held the funds appealed to the Supreme Court of Holland where the case was heard in July 1714. The details of the case were recorded in a diary kept by the judge Cornelius van Bijnkershoek.<sup>50</sup> This high profile case might have caught Areskine's attention. The elements of comparative national law and the use of Roman law would surely have interested him. Godolphin left his books to his nephew Charles Godolphin (c. 1651–1720) who bequeathed their combined collections to Wadham College, Oxford.<sup>51</sup> Many of the books from the older Godolphin's library are early printed books from Spain.<sup>52</sup> These, however, were not the complete collection

*Apotelesma, hoc est, corpus perfectum scholiorum, ad Institutiones Iustinianaeas pertinentium: Post adiectum ex postrema recognitione Arnoldi de Reyger* (1659), AL, h.7.33; and *Le code du très-chrestien et très-victorieux roy de France et de Navarre, Henry IIII, du droit civil iadis descrit, & à nous delaissé confusement par l'Empereur Iustinian: & maintenant reduit & composé en bon & certain ordre, avec le droit civil de la France, contenant trente & vn liures* (1615), AL, [k].2.4.

<sup>50</sup> A.J.B. Sirks, "William Godolphin's Last Will and the Civil Law", *Law Quarterly Review*, 123 (2007), 213–24. Bijnkershoek's observations on the case are in his diary. *Ibid.* 216, n. 13.

<sup>51</sup> Bodleian Library online exhibition, "Beyond the Work of One: Oxford College Libraries and Their Benefactors", available at <<http://www.ouls.ox.ac.uk/bodley/about/exhibitions/online/workofone>> accessed 10 Dec. 2009.

<sup>52</sup> *Ibid.*

assembled by Godolphin and books once owned by him are available in various modern libraries. It is not known how these books came to be dispersed. London-based physician and bibliophile Sir Hans Sloane acquired some of Godolphin's collection which means that some of Godolphin's books are now in the British Library.<sup>53</sup>

### Provenance: Owners after Areskine

Areskine left his library to his son James who followed him into the legal profession and continued to use the books in practice. James's son, John Erskine of Cambus (1758–1792), also became an advocate.<sup>54</sup> He was a keen bibliophile who from a young age recorded the books he read, kept lists of his growing collection, and ran his own circulating library for his family and friends.<sup>55</sup> The advocate Charles Hope, Lord Napier, and the minister William Greenfield were among those who borrowed books from Erskine of Cambus.<sup>56</sup> John predeceased his father and upon his death the books he had borrowed from him, which numbered about seventy and included Session Papers and law titles, were returned to "Lord Alva's Library" at Drumsheugh.<sup>57</sup> John's son, James Erskine of Aberdona (or Cambus) (1787–1851), inherited the library at his grandfather's death in 1796. A very detailed inventory of the contents of Drumsheugh House including the library was made in 1797 following the death of Lord Alva's widow, Jean Stirling. From this it is clear that the house contained

53 Geoffrey West, "When, Why, and From Whom? The British Library's Collection of Early Printed Books Containing Andean Languages", *45th Annual Meeting of the Seminar on the Acquisition of Latin American Library Materials (SALALM)*, 27–31 May 2000, (Los Angeles, CA, 2000) <[http://sherpa.bl.uk/115/01/andesLanges\\_\(2\).pdf](http://sherpa.bl.uk/115/01/andesLanges_(2).pdf)> accessed 10 Dec. 2009. West provides an example of a book with a Godolphin provenance with his signature on the title page, as Luis Géronimo de Ore, *Symbolo Catholio Indiano* (Lima, 1598) now shelved at BL, C.58.e.9. See also the Sloane Printed Books Catalogue, <<http://www.bl.uk/catalogues/sloane>>.

54 *Faculty of Advocates in Scotland*, 67.

55 John Erskine, "Memorandum Book of John Erskine, Argyles Square, Edinburgh, 1774", NLS MS 5117 includes a book list of forty-two titles. Erskine frequently lent or gave his books away. See NLS MSS 5118–5120 for his book lists and records of lending and giving.

56 Mark Towsey, *Reading the Scottish Enlightenment: Books and Their Readers in Provincial Scotland, 1750–1820* (Leiden: Brill, 2010), 50.

57 "Catalogue of books belonging to Lord Alva's library, in Mr Erskine's house, and since this date returned to Drumsheugh, 17th Feby 1792", in NLS MS 5114, "Erskine-Murray Inventories", f. 60. The same list is repeated at f. 64.

a room designated as a library but also that books were stored in various locations throughout the house including Lady Alva's dressing room which had "Two Mahogany book shelves" and the "Blue room" which had a "Mahogany book press with drawers" in its closet.<sup>58</sup> The value of Lord Alva's library was estimated at £471. This was more than either the estate's jewels or silver and silver-plate.<sup>59</sup>

James Erskine of Aberdona followed the family tradition of legal practice but it seems he had less interest in the historical law collection. When he selected books from his grandfather's collection in 1797, he chose mostly religious titles.<sup>60</sup> Charles Areskine's library was out of date for legal practice by the time it reached his great-grandson so it is possible that he began to break up the collection by donating portions of it to the Dollar Institution. Erskine was interested in libraries and education. He was a trustee of the Dollar Institution from 1826.<sup>61</sup> Although evidence does not survive, Erskine may have donated books to the Dollar Institution library throughout his tenure. A "Library Book List" of 1827 includes titles which match entries in his great-grandfather's 1731 list including octavo copies of "Fable of the Bees 2 Vol" and "Kames on Morality 1 Vol". The descriptions of the books in the Dollar library catalogue do not give publication or date information so it is impossible to know, although it is possible, that these books were passed on from the Erskine family collection. The Dollar Institution library had been completed by William Playfair in 1821 and the Trustees regularly granted funds for book and furnishing purposes. Erskine played an active role in the Institution's affairs and frequently chaired Trustees' meetings.<sup>62</sup> He would have been

<sup>58</sup> NLS MS 5114, "Erskine-Murray Inventories", ff. 28, 32v.

<sup>59</sup> Archibald Fletcher, *Information for Mrs Christian Carruthers, otherwise Erskine, relict of the deceased John Erskine, Esq. advocate, and others, trust-dispones of the Honourable James Erskine, of Alva, deceased, one of the Senators of the College of Justice, and of Dame Jane Stirling of Achyle, the second wife of the said Honourable James Erskine of Alva, Defenders; Against Mrs Isabella Erskine, otherwise Tytler, youngest lawful daughter procreated of the marriage between Lord Alva and Mrs Margaret Macguire, his first wife, now spouse of Lieutenant-Colonel Patrick Tytler, last of the Elgin Fencibles; and the said Colonel Patrick Tytler, for his interest, and their attorney, pursuers* (6 Sept. 1804), appx, p. 6.

<sup>60</sup> "Inventory of books taken out of the closet in L<sup>d</sup> Alva's room for Mr. Erskine, 1797 Oct<sup>r</sup> 21st" in NLS MS 5114, "Erskine-Murray Inventories", f. 70.

<sup>61</sup> *A Catalogue of Books & Documents Appertaining to the History of Dollar Academy since its Founding and at Present in the Muniments Room* (Dollar, 1971). The Dollar Institution changed its name to the Dollar Academy in 1918. I am grateful to archivist Janet Carolan for allowing access to the documents in her care.

<sup>62</sup> See e.g. NAS CS96/212, "Dollar Institution minute book, 1818–1831" for his chairing of meetings and participation in the school's management.

aware of the developing library and may have decided to donate some of his family's books. He does not seem to have received any acknowledgement for this but there are intriguing references in the Dollar Library accounts throughout the 1830s to an Erskine being paid "for Carriage" and on 4 August 1837, the library paid thirteen shillings for "Carriage of Books from Erskine".<sup>63</sup> Another Dollar Trustee, James Tait, advocate and Sheriff of Clackmannanshire and Kinross, presented "upwards of two hundred volumes of works on the civil law, formerly the property of the Hon Charles, Lord Tinwald and Lord Justice Clerk, and of his son Lord Barjarg and Alva" to the Faculty on behalf of the "Trustees of the Dollar Institution" in 1865.<sup>64</sup>

In addition to providing the explanation for how the Alva Collections books in Edinburgh came to be in the possession of the Trustees of the Dollar Academy by 1927, James Erskine of Aberdona provides a link for five books in the NLS Alva Collection which have provenances that relate to the Tytler family. Lord Alva's daughter Isabella married Patrick Tytler. In the next generation, the younger James Erskine married his cousin Jane Tytler in 1810. The families and their books had been close for years: John Erskine had given a copy of "Cornel. Nepos. Foulis" to "Mr Tytler" before 1780.<sup>65</sup> In the Alva Collections, two books, NLS Alva.20 and NLS Alva.270, were owned by the advocate, historian, and judge Alexander Fraser Tytler, Lord Woodhouselee (1747–1813).<sup>66</sup>

### Areskine's Books: Beyond Edinburgh

Books once owned by Areskine and members of his family have been dispersed globally. Their distribution seems to have begun in the 1830s with James Erskine's donations to the Dollar Institution. The breaking up of the collection continued throughout the 1850s when the Edinburgh bookseller Thomas George Stevenson offered books from them for sale. Stevenson's sales began with his advertisement of books on general topics from the Areskine and

63 "Dollar Library Accounts, 1828–1860", Dollar Academy Archive. I think these entries must refer to the person Erskine rather than the place.

64 "Faculty of Advocates Minute Book", F.R. 9, f. 96. I am grateful to John Finlay for alerting me to this reference. The two donations allowed the survival of Charles Areskine's books: the Dollar Academy library was destroyed by fire in 1961.

65 John Erskine, "Book Catalogue & Accounter, 1780", NLS MS 5120, f. 4v.

66 Alexander Du Toit, "Tytler, Alexander Fraser, Lord Woodhouselee (1747–1813)", *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/27965>> accessed 1 Sept. 2011.

Erskine libraries in 1850.<sup>67</sup> In this first of Stevenson's Areskine-related catalogues, only members of Areskine's family are mentioned as the previous owners of the "miscellaneous English and foreign books" on offer.<sup>68</sup> It is possible that the 1850 sale included books from other sources.<sup>69</sup> In 1851, a catalogue for a "Collection of Law Books" followed which offered books "chiefly from the libraries of the Hon. Charles Areskine of Tinwald, Lord Justice-Clerk: James Erskine, Baron of Exchequer, afterwards Lord Barjarg & Alva; and the Hon. David Hume, Baron of Exchequer".<sup>70</sup> This second catalogue combined law books from the libraries of Areskine and James Erskine with more from the library of Baron David Hume.<sup>71</sup> Baron Hume was a jurist and judge and nephew of the philosopher David Hume. He inherited the philosopher's books and these remained in the family until the death of his daughter in 1851 when Stevenson, who had created a manuscript catalogue of them in 1840, offered them for sale.<sup>72</sup> This was followed by another sale in 1852 which included "another portion of the libraries of the Hon. Charles Erskine of Tinwald, Lord Justice-Clerk; James Erskine, Baron of Exchequer, afterwards Lord Barjarg and Alva; and James Erskine, esq. of Aberdona" along with books from other collections.<sup>73</sup>

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67 Thomas George Stevenson, *Bibliotheca selecta, curiosa et rarissima. Part First of a General Catalogue of Miscellaneous English and Foreign Books, Including a Portion of the Libraries of the Hon. Charles Erskine of Tinwald, Lord Justice-Clerk: James Erskine, Baron of the Exchequer, afterwards Lord Barjarg and Alva; and James Erskine, Esq. of Aberdona* (Edinburgh: Thomas George Stevenson, 1850).

68 Stevenson, *Bibliotheca selecta, curiosa et rarissima. Part first*, title page.

69 David Fate Norton and Mary J. Norton, *The David Hume Library* (Edinburgh: Edinburgh Bibliographical Society; NLS, 1996), 51.

70 Thomas George Stevenson, *Catalogue of a Select Collection of Law Books (in Various Languages), Acts of Parliament and Assembly, Appeal and Peerage Cases, Statutes at Large, Debates in the Houses of Lords and Commons, Works on Diplomacy, Privilege, and Treaties of Peace; Including an Extensive Assortment of Civil and Criminal Trials, &c. Chiefly from the Libraries of the Hon. Charles Areskine of Tinwald, Lord Justice-Clerk: James Erskine, Baron of Exchequer, afterwards Lord Barjarg & Alva; and the Hon. David Hume, Baron of Exchequer. Now on sale* (Edinburgh: Thomas George Stevenson, 1851).

71 Norton and Norton, *David Hume Library*, 47–8; Stevenson, *Catalogue of a Select Collection of Law Books*. The title page of this catalogue is reproduced in Norton and Norton, *David Hume Library*, at 48. For the younger Hume's importance as a jurist see John W. Cairns, "Hume, David (bap. 1757, d. 1838)", *ODNB* (Oxford: OUP, Sept 2004; online edn, May 2007) <<http://www.oxforddnb.com/view/article/14142>> accessed 21 June 2010.

72 Norton and Norton, *David Hume Library*, 44, appx 2.

73 Thomas George Stevenson, *Bibliotheca selecta, curiosa et rarissima; Part Second of a General Catalogue of Miscellaneous English and Foreign Books, Including Another Portion*

This third catalogue produced by Stevenson offered “Part Second” of the Areskine and Erskine libraries and added “selections from the remarkably fine libraries of W.B.D.D. Turnbull...and Thomas Maitland, Lord Dundrennan”.<sup>74</sup> Turnbull was a lawyer, archivist and antiquarian. He sold his library in Edinburgh in 1851 before moving to London where he assembled another collection. Presumably the books Stevenson offered in 1852 were those left unsold after a two week auction which occurred in November 1851.<sup>75</sup> Maitland was a judge and antiquarian. His library was sold after his death at a nine day long auction in November 1851. As with the Turnbull books, the books offered in the sale catalogue may have been remainders from the auction of the previous year.<sup>76</sup> The Turnbull and Maitland books appear after page 87 of the catalogue: they are set out separately from the Areskine and Erskine books.

In December 1851, the advertisement for the sale of Turnbull and Maitland’s books caused Lord Henry Cockburn to lament the sales of the great book collections of his and an earlier age and to reflect on book collecting more generally. He wrote in his journal that

There are few things more common, or I think more sad, than the frustration of hope implied in the scattering of a private library. All collectors of books expect to leave them as monuments of their taste, and they go on adding volume to volume, each with its portion of their delight, in the faith that while they live, and those by whom they are succeeded, will enjoy and be proud of the accumulated treasures. Yet, in Edinburgh at least, the pleasure of collecting seems to be the only pleasure that collectors are desired to enjoy. Glenlee,<sup>77</sup> I understand, made a sort of entail of his library by strange but effective trust, so that his heirs cannot sell,

*of the Libraries of the Hon. Charles Erskine of Tinwald, Lord Justice-Clerk; James Erskine, Baron of Exchequer, afterwards Lord Barjarg and Alva; and James Erskine, esq. of Aberdona; also Selections from the...Libraries of W.B.D.D. Turnbull, esq., and Thomas Maitland, Lord Dundrennan; Now on Sale* (Edinburgh: Printed by MacPherson & Syme, 1852).

74 Stevenson, *Bibliotheca selecta, curiosa et rarissima. Part Second*, title page.

75 Francis Edwards, “Turnbull, William Barclay David Donald (1811–1863)”, *ODNB* (Oxford: OUP, 2004; online edn, Jan. 2008) <<http://www.oxforddnb.com/view/article/27840>> accessed 20 Jan. 2010.

76 G.C. Boase, “Maitland, Thomas, Lord Dundrennan (1792–1851)”, rev. Robert Shiels, *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/17836>> accessed 20 Jan. 2010.

77 Judge. G.F.R. Barker, “Miller, Sir William, second baronet, Lord Glenlee (1755–1846)”, rev. Anita McConnell, *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/18742>> accessed 16 Aug. 2014.

having only the use of it. This has saved his library as *yet*, but with this exception, all of the considerable Edinburgh collectors have been dissipated by the hammer of the auctioneer. Thomas Thomson's, so rich in history, went first.<sup>78</sup> Then Macvey Napier's,<sup>79</sup> small but very choice...Next Kirkpatrick Sharpe's,<sup>80</sup> which is announced, composed chiefly of antiquarian oddities. A few days ago that of a strange person called Turnbull, gorgeous in local histories went; and in a few days more that of my friend Thomas Maitland (the late Lord Dundrennan) will be separated into its atoms. His, to my taste, was the best of them all, consisting of above 5000 of the most readable volumes, in the most beautiful order. And there was Principal Lee's, loaded with historical and chiefly Scotch varieties, but all in abominable condition.<sup>81</sup> I could name some more that one day must be sacrificed, one very fine one in particular. Scott's made the narrowest possible escape.<sup>82</sup>

As the variety of previous owners listed in Stevenson's sales shows, sale catalogues cannot be used as firm evidence for the provenance of books. All of the

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- 78 Thomson sold his library to pay debts in 1841. Tristram Clarke, "Thomson, Thomas (1768–1852)", *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/27324>> accessed 16 Aug. 2014.
- 79 Lawyer and librarian. Joanne Shattock, "Napier, Macvey (1776–1847)", *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/19760>> accessed 16 Aug. 2014.
- 80 Antiquarian. Patrick Cadell, "Sharpe, Charles Kirkpatrick (1781–1851)", *ODNB* (Oxford: OUP, 2004; online edn, Jan. 2011) <<http://www.oxforddnb.com/view/article/25225>> accessed 16 Aug. 2014.
- 81 John Lee's library was not dispersed until after his death in 1859. Fergus Macdonald, "Lee, John (1779–1859)", *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/16296>> accessed 17 Aug. 2014. See *Catalogue of the First Portion of the Extensive Library of the Late Very Rev. John Lee, D.D., Principal of the University of Edinburgh: Consisting of a Highly Valuable and Interesting Collection of Books in Scottish History and Antiquities, Ecclesiastical History, Theology and General Literature, Controversial Theology, Privately Printed Works, &c., &c., &c.* (Edinburgh: Colston and Son, 1859). As noted above in Chapter 2, Lee may have been interested in Areskine's career and acquired materials relating to him.
- 82 Henry Cockburn, Lord Cockburn, *Journal of Henry Cockburn: Being a Continuation of the Memorials of his Time, 1831–1854*, vol. 2 (Edinburgh: Edmonston and Douglas, 1874), 266–7. Cockburn's prediction about the "very fine" library proved to be correct: his own library was sold at auction in Edinburgh over five days in 1854. *Catalogue of the Valuable Library of the Late Lord Cockburn, Consisting of an Extensive Collection of Books in English and Scottish History and Antiquities, the Belles Lettres, Law and General Literature* (Edinburgh: Colston and Son, 1854).

previous owners mentioned on Stevenson's catalogue title pages had careers in law and would have been interested in the same types of texts. The dates of the books are also unreliable for determining ownership since both Turnbull and Maitland were antiquarians, were interested in law, and might have acquired older books to indulge these interests. Sources like the 1731 manuscript and the physical evidence provided by bookplates, signatures, and inscriptions are far more reliable ways of determining ownership.

The close study of a single library catalogue offers multiple possible directions. Combining biographical information about Areskine with his list of books has allowed us to consider the relationship between legal practice and the private library in the first half of the eighteenth century. Looking at Areskine's non-legal books permits speculation about his involvement in the social and cultural concerns of his day. Taken together the contents of Areskine's library give us insights into the meaning of the Scottish Enlightenment for an individual who experienced it as a legal practitioner, patron, and "enlightened" person. Areskine's books demonstrate the complexities of defining the Enlightenment while opening new potential ways of understanding what the Enlightenment meant for an eighteenth-century person.

# Conclusion

Charles Areskine's library is a valuable resource for exploring the Scottish Enlightenment. Although it is primarily a collection built for use in a legal career, Areskine's selection of legal texts also demonstrates his concern for the learning of the classical tradition as well as an interest in natural law theories. It shows connections and similarities with the traditions of learning encouraged by legal humanist scholars and jurists of previous generations. His "miscellaneous" books demonstrate an engagement with the modern ideas of contemporary thinkers and with the issues and concerns of his time.

The question of the role advocates played in the intellectual history of Scotland matters. It is true that as professional men with active careers to pursue, most advocates have not left written evidence for their participation in published Enlightenment debates in the traditional forms of books, treatises, or other written works. However, they can be seen to have taken part in other significant ways – by offering patronage, sponsoring and buying books, improving estates, and encouraging and joining new institutions. With their support of education and the financial and political backing they gave to scholars, philosophers, and poets, Scottish lawyers provided the framework which allowed the Scottish Enlightenment to take shape and to flourish. Their legacy is complex. Their study of modern ideas of natural law with its ethical importance and moral implications shaped the sceptical rational thinking which was a hallmark of the Scottish Enlightenment. Meanwhile, their continued exploration of Roman law and its classical, medieval, and modern contexts influenced modern Scots law and something that still has resonance today. Scottish lawyers took the seventeenth-century ideas and texts of Grotius, Pufendorf, Stair, and Mackenzie and developed them in the contexts of their time as they refined Scots law and shaped their society. Their willingness to import useful laws from other traditions into their own legal system shows that Scottish lawyers were masters of combining ancient and modern ideas to create coherent and workable systems of thinking based on reason.

## Advocates in the Scottish Enlightenment

Nicholas Phillipson placed lawyers, specifically members of the Faculty of Advocates, at the political centre of Scottish society in the eighteenth century. Advocates thought of themselves as "a corporation lineally descended from

the last Scots Parliament with a mission to lead the polite commonwealth of Scotland into the paths of virtue".<sup>1</sup>

Richard B. Sher has challenged this idea about the importance of lawyers as key players in the later stages of the Scottish Enlightenment, saying

Important as it was, the role of lawyers in the intellectual life of the mature Scottish Enlightenment has sometimes been exaggerated, particularly by those who would extend the boundaries of the Scottish Enlightenment into the nineteenth century and would confuse the undisputed *social* pre-eminence of the legal profession...In fact, the elite status of eighteenth-century Scottish lawyers and judges may have actually have discouraged intellectual activity, first by providing political and administrative opportunities that left many legal men of taste and intelligence...with little time for literary pursuits (though they often kept their hand in by adopting the aristocratic role of literary patron), and second by depriving the legal profession of the financial and social pressures that so frequently stimulated clergymen to better their situations by seeking distinction in the republic of letters.<sup>2</sup>

This image of lawyers does not consider the written pleadings of lawyers which were read by their colleagues and debated in the courts. "Ours is a court of papers", wrote the biographer, diarist, and advocate James Boswell in 1776. "We are never seriously engaged but when we write".<sup>3</sup> Boswell was referring to the thousands of Session Papers printed on millions of quarto pages that survive in Edinburgh's libraries and archives. Session Papers – the written pleadings of the Scottish courts – evolved as a part of court procedure in the seventeenth century as judges sought control over how they were informed about litigation. These pleadings, now lingering in dusty often uncatalogued volumes, were central to lively debates about important issues in a public place. Lawyers brought centuries of learning to their understanding of and attempts to resolve contemporary problems, and challenged each other's conclusions in written responses. Written and, by the eighteenth century, printed "Informations",

<sup>1</sup> N.T. Phillipson, "Lawyers, Landowners, and the Civic Leadership of Post-Union Scotland: An Essay on the Social Role of the Faculty of Advocates, 1661–1830 in 18th Century Scottish Society", *Juridical Review*, new ser. 21 (1976), 97–120 at 119.

<sup>2</sup> Richard B. Sher, *Church and University in the Scottish Enlightenment: The Moderate Literati of Edinburgh* (Edinburgh: EUP, 1985), 315.

<sup>3</sup> James Boswell, *Boswell's Edinburgh Journals, 1767–1786*, ed. Hugh M. Milne (Edinburgh: Mercat Press, 2001), 238.

Petitions, Answers, and other procedural statements developed and these gave advocates opportunities to demonstrate not only the facts of their cases but also their knowledge of legal and other authorities.<sup>4</sup> As John Finlay points out:

It is only natural to find connections between lawyers and men of letters because the written pleadings demanded of practising advocates give ample proof that the best of them were men of wide knowledge, literary, historical and scientific. For them, all knowledge was potentially useful and in the session papers they gave full vent to their passion for history and moral philosophy.<sup>5</sup>

Advocates also had impact as book collectors. Lawyers shared their books with scholars (who used them for research and to create their own texts), discussed the ideas contained in them as members of intellectual societies, and, as Sher points out, sponsored new works. While it is the case that in the second half of the eighteenth century, clergymen, medical practitioners, and those involved in education dominated the literary output of the Scottish Enlightenment,<sup>6</sup> they could not have done this without the help of the lawyers of the previous generation who had promoted philosophical, scientific, and sceptical thinking and fostered the intellectual environment the later enlightened environment its authors needed to succeed.

Lawyers were not an isolated group. They were part of the early modern republic of letters and they communicated with their friends and relatives who were physicians, clergymen, and scholars. Books were central to all this and entrenched as an important part of the social life of the Scottish elite by the early eighteenth century. Phillipson's view may give too much credit to the Faculty of Advocates but there is no doubt that the Faculty gave attention to law reform, had members who were concerned about modernisation, and advocates saw themselves as having a "public role".<sup>7</sup> It is not an exaggeration to credit Areskine and his legal colleagues with aiding the development of the Scottish Enlightenment socially, culturally, and intellectually.

<sup>4</sup> David R. Parratt, *The Development and Use of Written Pleadings in Scots Civil Procedure* (Edinburgh: Stair Society, 2006).

<sup>5</sup> John Finlay, *The Community of the College of Justice* (Edinburgh: EUP, 2012), 50.

<sup>6</sup> Richard B. Sher, *The Enlightenment and the Book: Scottish Authors and Their Publishers in Eighteenth-Century Britain, Ireland and America* (Chicago; London: University of Chicago, 2006), 104.

<sup>7</sup> John W. Cairns, "Alfenus Varus and the Faculty of Advocates: Roman Visions and the Manners that were Fit for Admission to the Bar in the Eighteenth Century", in *Ius commune: Zeitschrift für Europäische Rechtsgeschichte*, 28 (2001), 203–32 at 205.

### Areskine as a Book Collector

Areskine's use of books in his professional life caused him to have different priorities from those of other collectors when he made his selections. His library was different therefore from the collections assembled by the wealthy aristocrats of his time and it was also different from the libraries bought by bibliomaniacs later in the century: it had more in common with the new generation of professional collectors like the physicians Richard Mead, Hans Sloane, and Areskine's brother Robert, a generation that arose in the late seventeenth and early eighteenth centuries.<sup>8</sup> Areskine's collection also pre-dates the desiderata of a later generation of collectors, who would increasingly emphasise the importance of first editions, the consideration of a book's rarity over its content as a determinant of its value, and a shift in interest from classical to modern texts.<sup>9</sup> Sir George Mackenzie also preferred first editions, but whereas later collectors saw first editions as desirable in their own right, he saw them as more likely to demonstrate the author's true intentions about their contents since "in later editions errors...must necessarily creep in".<sup>10</sup>

Areskine's eighteenth-century world offered many opportunities for book collecting and specialists emerged with the expertise to help collectors. Books could be bought abroad during grand tours, and libraries could be further expanded at home at frequent sales and auctions. Buyers, agents, producers, librarians, and sellers stimulated a growing market for books. Networks of scholars with shared interests crossed national boundaries and transcended political rivalries. In a world where patron and client relationships controlled political and social networks, books strengthened relationships, could be offered as gifts, and the dedications of books demonstrated alliances both hoped for and real.

Areskine's educational and social background makes sense of some of the contents of his book collection. Although the 1731 manuscript seems to lack titles from Areskine's younger years including those relating to his time as an undergraduate, it does contain much which relates to his later studies. This is

<sup>8</sup> For these eighteenth-century physician collectors see Karen Grudzien Baston, "The Library of Charles Areskine (1680–1763): Scottish Lawyers and Book Collecting, 1700–1760", PhD. diss. (University of Edinburgh, 2012), 38–42.

<sup>9</sup> Arnold Hunt, "Private Libraries in the Age of Bibliomania", in *The History of Libraries in Britain and Ireland*, 2: 1640–1850, ed. Giles Mandelbrote and K.A. Manley (Cambridge: CUP, 2006), 438–58 at 438–9.

<sup>10</sup> George Mackenzie, "Sir George Mackenzie's Speech at the Formal Opening of the Advocates' Library, Edinburgh, 15 March 1689", trans. James H. Loudon, *Edinburgh Bibliographical Society Transactions*, 2 (1946), 275–84 at 283.

especially the case for the legal texts listed in the manuscript which include many books associated with the Dutch “elegant” school. This includes the very first entry on Areskine’s list, the three-volume *Pandectae Florentinae* of 1553. Books by Gerard Noodt and his fellow promoters of “elegant” jurisprudence take their place alongside texts of Roman law in both Latin and Greek. This suggests that Areskine’s interest went beyond collecting the texts he needed to practice his profession. It is one thing to cite Roman law in legal cases and quite another to wish to translate the texts from scratch. Books relating to the French humanist traditions of modern legal usage are also very well represented in Areskine’s collection. Areskine’s approach was practical as well as intellectual. In one of his written pleadings, Areskine hinted that he could have cited more sources than he had, commenting that his legal colleagues had access to “common Books”.<sup>11</sup> Studies of the relationships between Areskine’s printed Session Papers and his books may provide more examples of how a lawyer engaged with his books and other libraries while drafting his papers.

The combined study of Charles Areskine’s manuscript catalogue of 1731 and of his books which survive in the Alva Collections of the National Library of Scotland and the Advocates Library have provided important information about how private libraries in Scotland in the early to mid-eighteenth century developed. Libraries were catalogued and their contents were arranged for ease of use. Books frequently moved between collections. Sales and auctions provided the means for collectors to acquire books related to their interests. Books travelled across boundaries and carried their ideas with them. Legal practitioners formed a network of collectors. Books were important for their profession and the Faculty of Advocates started creating a model collection for its library in the late seventeenth century. Sir George Mackenzie encouraged advocates to donate their collections to the Advocates Library but many families preferred to keep, develop, and use their private collections rather than giving them to the Faculty. Book auctions and sales also ensured that books circulated throughout Edinburgh’s community of advocates. Areskine and other private buyers competed with the Advocates Library in a lively book marketplace.

The collectors of the law books now found in the Alva Collections in the National Library of Scotland, and the Advocates Library and beyond developed their libraries as tools for professional practice. There is no doubt that Areskine was an active participant in the book collecting culture of early modern Britain

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<sup>11</sup> Charles Areskine, *Information for Appollonius Lampsints, Hieronymus Joseph Boudaen, Johan Steengragt, and Peter van Hoorn, Lords and Directors of the East India Company of Holland* (Edinburgh, 1729), 23.

and especially Edinburgh. He bought books from sales and auctions and he made a catalogue to record his library. The provenance details found in Areskine's books confirm his possession of them and they validate the accuracy of the 1731 manuscript while establishing Areskine as an important eighteenth-century book collector. He left his books to his son James with the assurance that his library would survive him and would continue to be useful. Both Charles Areskine and James Erskine acquired books from lawyers of previous generations and preserved them for the next. Their surviving books made their way to the twenty-first century via inheritance and donation and it is fitting that so many of them have made it to institutional collections worldwide. His foresight allows an exploration of his library and its meaning.

### Law Books in Scotland

The way of looking at the law considered by Montesquieu in his *The Spirit of the Laws* offers a key for understanding the contents and contexts Charles Areskine's library. For early modern legal theorists, natural law underpinned law in general. Legal systems developed differently over time and place because people needed different things from their laws. Roman law, although based on reason, had to be interpreted as the customary law of the Roman Empire and not as a universal system. Scots law was different from other laws but it had the flexibility to import good laws from other systems as needed. Collections of customary law from different regions were therefore useful in practice as potential sources of legal transplants. Scholarship would determine which laws were good and reasonable and humanist scholarship on the *Corpus iuris civilis* would decide what the Roman law had actually been so that it could be used in its finest form. All of these elements were important parts of Areskine's legal heritage and his library shows the multidisciplinary approach early modern lawyers took to their studies and practice. Finally, a working Scottish lawyer did well to have all of these sources available for easy reference when he was composing his pleadings.

Areskine's library manuscript offers challenges to traditional narratives of European legal history by its inclusion of a wide variety of legal material which goes beyond any traditional designation of "schools" or of practice.<sup>12</sup> Areskine's

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<sup>12</sup> Karen G. Baston, "Humanist Books and Lawyers' Libraries in Early Eighteenth-Century Scotland: Charles Areskine of Alva's Library", in *Reassessing Legal Humanism and Its Claims: Petere Fontes?*, ed. John W. Cairns and Paul J. Du Plessis (Edinburgh: EUP, 2015), 348–76.

books, both legal and miscellaneous, show his engagement with the concerns of his age. The ideas of philosophers, professors, and legal practitioners were closely related to each other in eighteenth-century Scotland. The sociable culture of early Enlightenment Scotland allowed lawyers to share their learning in wider contexts than the courts. This meant that comparative law, natural law, and theories of law were discussed in clubs, drawing rooms, and other social spaces.

Scottish authors of legal texts recognised that interest in legal works went beyond the legal profession. Stair thought his *Institutions* "might not only be profitable for Judges and Lawers, but might be pleasant and useful to all persons of Honour and Discretion".<sup>13</sup> Bankton also hoped his *Institute* would have appeal beyond the legal profession and he stated that he had "as much as possible, avoided law-terms, or sufficiently explained them; and...endeavoured to render the stile agreeable to readers accustomed to the purity of the English language; so that the work may be entertaining as well to others, as those conversant in the law".<sup>14</sup> Advocates and judges, as elite members of Edinburgh's educated society, set intellectual trends and offered their patronage to those who shared their ideas. They were noted for their book collecting and their willingness to share books and to discuss them in bespoke library spaces in their homes.

### Charles Areskine's Books

Areskine left his library to his son, James Erskine, Lord Alva (1722–1796), who used the collection throughout his own legal career. James created his own library catalogue in 1774, which listed his father's original 1731 manuscript.<sup>15</sup>

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<sup>13</sup> James Dalrymple, Viscount of Stair, *The Institutions of the Law of Scotland, Deduced from its Originals, and Collated with the Civil, Canon, and Feudal-laws; and with the Customs of Neighbouring Nations*, 1 (Edinburgh: Printed by the heir of Andrew Anderson, printer to His most Sacred Majesty, 1681), 1.

<sup>14</sup> Bankton, Andrew MacDowall, Lord, *An Institute of the Laws of Scotland in Civil Rights: with Observations upon the Agreement or Diversity between them and the Laws of England. In Four Books. After the General Method of the Viscount of Stair's Institutions*, 2 (Edinburgh: Printed by R. Fleming, for A. Kincaid and A. Donaldson, and sold by them and other book-sellers, 1753), p. xi. He was also particularly keen to attract an English readership. See Andrew R.C. Simpson, "Learning, Honour and Patronage: The Career of Andrew McDouall, Lord Bankton, 1746–60", in *Miscellany Six by Various Authors*, ed. Hector L. MacQueen (Edinburgh: Stair Society, 2009), 121–219 at 133.

<sup>15</sup> Now found in EUL, Centre for Research Collections, ms Laing La.III.755. Work is currently underway to transcribe this manuscript so that a comparison with Areskine's catalogue can be made.

Erskine used at least some of his father's books, notably his collection of Session Papers, in his own work. However, times were changing and the usefulness of Areskine's scholarly collection waned. Lawyers came to depend less on the civilian tradition as the Scottish legal system developed through the eighteenth century and humanistic interest in the Latin and Greek texts of law faded in favour of case law. By the mid-nineteenth century the style of law that had been practiced by Areskine was no longer viable and some of the books he had used became antiquarian curiosities. Lawyers of Areskine's generation of Scottish lawyers came to be seen as

honest, able worms that burrowed away their lives amid the parchment, the print, and the moths of Voet and Heineccius, of Stair and [John] Erskine, of the *Ius Feudale* and the *Pandects*....From 1850 Vinnius and the *Corpus Juris* vanished into obscurity. When dragged by the erudite from their hiding places they are now greeted with a sneer!<sup>16</sup>

It is not surprising, therefore, that in the early 1850s the Edinburgh bookseller Thomas George Stevenson would come to advertise three sales: the libraries which had belonged to Areskine and his descendants.<sup>17</sup> Stevenson took care to note the presence of rare and valuable editions and, especially of Elzevier and Aldine publications. It is a tribute to Areskine that his library clad in what Stevenson described as its "old vellum" and "old calf" bindings continued to have value for the lawyers in his family for nearly a century after his death and that they were still desired by book collectors well into the nineteenth century.

Looking at eighteenth-century Scottish advocates in their own place and time and thinking about the books they used as parts of a living legal system allows us to explore their intellectual world in appropriate contexts. Areskine was a student, teacher, and the professor of a specialised subject before he became a lawyer. As a lawyer, Areskine was not just an advocate but also a politician and, eventually, a judge. As a moderate member of the presbyterian kirk

<sup>16</sup> J. Crabb Watt, *John Inglis, Lord Justice-General of Scotland: A Memoir* (Edinburgh: William Green and Sons, 1893), 54–5.

<sup>17</sup> Thomas George Stevenson, *Bibliotheca selecta, curiosa et rarissima. Part First of a General Catalogue of Miscellaneous English and Foreign Books, Including a Portion of the Libraries of the Hon. Charles Erskine of Tinwald, Lord Justice-Clerk; James Erskine, Baron of the Exchequer, afterwards Lord Barjarg and Alva; and James Erskine, Esq. of Aberdona* (Edinburgh: Thomas George Stevenson, 1850). Stevenson published a catalogue of law books in 1851 followed by the "Second Part" of the miscellaneous books in 1852.

he acted to support clergymen like John Simson who allowed a place for Newtonian science in his world view and John Jardine who combined his career as a moderate clergyman with political responsibilities and an active social and literary life. Leaders in society and the law such as Areskine were instrumental in ensuring that the free expression of ideas that cost the Edinburgh student Thomas Aikenhead his life in 1697 was an accepted part of intellectual discourse by 1800. Areskine collected his library when a system that encouraged foreign travel for legal training was still in place, when Scots law was being refined in the courts and in opposition to the influence of English law, and when the intellectual achievements of the Scottish Enlightenment were beginning to take shape. Areskine and his books were at the heart of the legal and intellectual developments of the first half of the eighteenth century in Scotland. Buying books and discussing them were important activities for learned gentlemen throughout the eighteenth century. Building libraries and sharing books promoted social relationships, enhanced alliances, and ensured status and influence. Visiting libraries and socialising in them both abroad and at home demonstrated learning and culture. A private library provided more than the tools for professional practice or the sources of polite learning: it was, both in its books and in its physical space, at the very centre of an enlightened gentleman's life.

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